SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 293.

THE UNITED STATES, APPELLANT,

vs.

ANTONIO SERAFIN PENA, L. Z. FARWELL AND M. Z. FARWELL, AND JOSE A. GARCIA ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 *Transcript of record.*

ANTONIO SERAFIN PEÑA ET AL. *vs.* UNITED STATES.	No. 99.	Petaca grant.
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UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 17th day of February, A. D. 1893, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

Petition in the matter of private land claim La Petaca.

In the United States Court of Private Land Claims in and for the Territory of New Mexico.

ANTONIO SERAFIN PENA, BENIGNO C. HERNANDEZ, Agapito Gutierres y Naranjo Ramon Martinez, Fermin Ribal, Deciderio Ortiz, Maria del Refugio Maestas, Maria Dolores Martinez, Eusebio Giron, Donaciano Barela, Peter Martin, Juan Lucero, Luisa Valdez, Francisco Estevan Benavidez, Jose Martin Torres, Juan Pascual Martinez, Maria Viviana Martinez, Jose Florencio Valdez, Amador Venavidez, Jose Roibal, Jos. Neill, Santiago Valdez, Jose Teodosio Pena, Dionicio Torres, Juan Jose Dominguez, Eugenio Martinez, Deciderio Valdez, Jose Antonio Benavidez, Antonio Rito Torres, Pantaleon Martinez, Pablo Gallegos y F. y Maria Antonio Trujillo, Teodoro Maes, and others, plaintiffs,

versus

THE UNITED STATES and M. Z. FARWELL, CHAS. Gildersleeve, and Henry Buckman, defendants.

To the honorable United States Court of Private Land Claims, Joseph R. Reed, chief justice:

Now come the above-named plaintiffs, your petitioners, through their counsel, Geo. Hill Howard, Jeffries and Earle, and respectfully represent:

1st. That they are the heirs at law and legal representatives
2 of the original grantees hereinafter named of the said private land claim "La Petaca," situated in the counties of Rio Arriba

and Taos, territory of New Mexico, containing about 186,977 acres of land, more or less, to which your petitioners, as such said heirs and legal representatives of such said grantees, make claim and assert ownership in fee.

2nd. That on the 29th day of January, 1836, one Jose Julian Martinez, Antonio Martinez, Francisco Antonio Atencio, and the sons of the latter made application to the ayuntamiento of the district for a grant to a tract of land known as "La Petaca," on the Petaca River, a branch or confluent of the Ojo Caliente River, counties and territory aforesaid, then one of the territorial political divisions of the Republic of Mexico.

3rd. That on the 22nd day of February following the said ayuntamiento, acting favorable upon said petition, reported to the then political chief, Governor Albino Perez, of the said territory, that a certain grant for the same land had been abandoned and forfeited, and recommending that the grant to the same land applied for by said Martinez for himself and associates, except to the sons of Atencio, because the latter were miners, should be made.

4th. That on the 25th of the same month the said political chief, Governor Albino Perez, made the grant as prayed for, and directed the local alcalde to place the parties in possession of the land and file among the archives the act of possession and furnish the parties a testimonio thereof for their evidence of title.

5th. That on the 25th day of March then next following the said alcalde proceeded to the land in question, and the parties interested being all present, in conformity with the laws, usages, and customs then in force, placed the said named petitioners and the others named in the body of the act of possession and in the annexed list thereof, to wit, Manual Trujillo, Juan de Jesus Olguin, Lorenzo Griego, Francisco Valdez, Juan de Jesus Vigil, Joaquin Martin, Jesus Ma. Barela, Jose Antonio Lucero, Jose Gabriel Vigil, Juan de Jesus Jaquez, Juan de los Reyes Sena, Carlos Torres, Antonio Feliciano Martin, Jose Bernardo Torres, Benito Martin, Felipe Jaquez, Eusebio Chavez, Antotonio Jose Martinez, Antonio Jose Chavez, Sabino Chavez, Antonio Martinez, Francisco Antonio Atencio, Jose Julian Martinez, Jose Julian Sanchez, Amador Sanchez, Jose Antonio Roival, Juan Antonio Chavez, Antonio Trujillo, Jose Trujillo, Jose Maria Jaques, Manuel Torres, Mariano Pena, Elauterio Ortiz, Jose Francisco Lucero, Jose Antonio Lucero, in the due juridical possession of the said tract of land under the following boundaries, to wit: On the north, the hill commonly called Tio Ortiz; on the east, the creek of the Aguaje de la Petaca; on the south, the entrance to the canoncito and the lands of Jose Miguel Lucero; and on the west, the boundary of the Vallecito de Lovato grant; assigning to all those named in the list within the said general boundaries each one hundred and fifty varas or yards wide from north to south and from east to west, the said boundaries of the grant, together with an interest in common with the other grantees in the whole of the said grant, and

3 designating to each of the following of the said grantees a specified piece of land within the said general limits and as set forth in said act of possession, to wit, Felipe Jaquez, Manuel Lujan, Mariano Pena, Antonio Elauterio Ortiz, Jose Francisco Lucero, Jose Antonio Lucero, and Juan de Jesus Jaquez.

All of which, with exceptions of allegations of paragraph 1 hereof, is set forth in and shown by the said grant and the said act of possession.

6th. That by virtue of the said grant and the said juridical act of possession the said tract was fully and effectually severed and segregated from the public domain of the then Republic of Mexico by well-known meet's and bounds and natural objects set forth in the said act of possession, and has ever since and to the present time remained so segregated and in the actual useful occupation and possession of the said original grantees thereof, their heirs and legal representatives, in full private ownership absolutely and in fee-simple and as a lawful, complete, definitive, and perfect title of, in, and to the said tract.

7th. That Executive Document No. 31 of the U. S. Senate, 44th Congress, 1st session, contains correct copies and translations of the said petition, grant, and act of possession, and transcript of the proceedings had before the U. S. surveyor-general, J. E. Proudfit, A. D. 1875, of the said territory, in the matter of the said grant, the evidence adduced before him therein, and his decisions thereon, which said executive document is hereby referred to, and the same is filed in duplicate herewith as containing correct copies and translations of the said petition, grant, and act of possession, and transcript of the evidence had before the said surveyor-general, so that the same may be availed of by your petitioners upon the trial of the cause in this honorable court when the testifying witnesses are deceased. Filed as Exhibit B in duplicate.

8th. That the intent and purpose of the petitioners for the said grant and of the granting authority in granting the same was that it should be a community grant and enure to the benefit of not only the named petitioners, but for all those persons neces'itous of lands who should present themselves at the time of the juridical possession and be named and designated as participants and beneficiaries therein, either in the body of the act of possession or in the annexed list, and that said intent and purpose was carried into effect through and by the said act of possession, the said petitioners named in the petition and in the report of the said ayuntamiento, to wit, Jose Julia/ Martinez, Antonio Martinez, and Francisco Antonio Atencio, being present and acquiescing in the said act of possession to them and to the other parties named in the body thereof and the accompanying and attached list and the whole thereof.

9th. That, as appears from and is shown by the proceedings had before the said U. S. surveyor-general, J. K. Proudfit, A. D. 1875, in the matter of the said grant, the descendants and legal representatives of the petitioners named in the petition therefore and in the said act of possession and annexed or accompanying list, without claim of betterment for any one of them, made their petition in the matter of the said
4 grant to the said surveyor-general for the confirmation of the same to them all, and the said surveyor-general, after an examination of the matter and of the evidence adduced therein, rendered his desicion approving the validity of the grant, and that the same be confirmed to Jose Julian Martinez and the others named in the act of possession. See Exh. B.

10th. That the original testimonio or title document, including the said act of possession in and for the said tract, which was delivered to the said grantees as their evidence of title at the time the said grant

was made, as aforesaid, under the laws, usages, and costums then obtaining in the country and in pursuance of the order of the then governor in the said grant document, rightfully remained in the possession of the said grantees as their evidence of title until the same was filed by them in the office of the surveyor-general in the matter of the said grant, and has there remained ever since as file No. , and is therefore without the control of your petitioners.

11th. That, notwithstanding deligent search therefore by your petitioners, they are unable to find the archive copy or evidence of the said grant for the said tract, and aver that their said failure to find the same is due to the notoriously incomplete and faulty condition of the archives of the Mexican Government, now in the possession of these United States.

12th. That the said tract does not lap or conflict in whole or in part with any other grant derived from Spain or Mexico, nor are there any adverse claimants of, in, and to the same other than as hereinafter set forth.

13th. 'our petitioners are informed and believe that subsequent to the said examination and decission of the said surveyor-general, Proudfit, in the matter of the said grant, Chas. H. Gildersleeve and S. S. Farwell made purchase in whole or in part of the interests of Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio of, in, and to the said grant from the heirs at law of the said parties, and to the extent of the interests acquired, if any, through such purchases became tenants in common with your petitioners in the said tract, but that the said Gildersleeve and Farwell pretend and claim that the said grant of La Petaca was made solely unto the said Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, the parties named in the petition for the said grant, and that therefore they, as the legal representatives of these said Martines and Atencio, are the owners of the whole or the greater part of the said grant; which said pretence and claim your petitioners aver to be unwar'anted either in law or fact.

That in July 28th, 1883, the said S. S. Farwell made his petition to H. M. Atkinson, then U. S. surveyor-general of this Territory, pretending and claiming that the said grant was made solely to the said Jose Julian Martines, Antonio Martines, and Francisco Antonio Atencio, with the exception of the specified small tracts set forth in the act of possession, and requested the said Surveyor-General Atkinson to report all the facts to the proper authorities at Washington, in order that the grant be confirmed by Congress to the persons who are entitled to the same, their heirs and representatives.

That the said Sur. Gen. Atkinson, wholly unauthorized by law thereunto and without the request of Congress therefore, made an ex parte review of the decissions of his predecessor, the said Proudfit, and on the 1st day of August, 1883, rendered his opinion that the legal and equitable title to the said grant was vested in the said Jose Julian Martines, Antonio Martinez, and Francisco Antonio Atencio as the sole grantees thereof, and recommended that the same be confirmed to them, and the said Atkinson reported his decission and opinion and recommendation to Congress. (See U. S. Senate Executive Document No. 52 of 49th Congress, 2nd session.)

14th. That in April, 1886, U. S. Surveyor-General George W. Julian, of this said Territory, 'authorized by law thereunto and without the request of Congress therefore, made an ex parte review in the matter of the said grant and of the aforesaid action therein of his predecessors, J. K. Proudfit and H. M. Atkinson, and reported his views, conclusions, and recommendations in the premises to Congress, which report was January 21st, 1887, transmitted to Congress by the Department of the Interior. (See Ex. Doc. No. 52, U. S. Senate, 49th Congress, 2nd session.)

15. That during the year 1878 an official preliminary survey of the said grant was made, which survey was on the 6th of December 1878, approved by H. M. Atkinson, the then U. S. surveyor-general for this said Territory; a certified copy of the plat of the said survey is filed herewith as the sketch made of petitioners in the matter of this cause as Exhibit C; and your petitioners aver that the said survey is a correct ascertainment of the exterior boundaries of the said grant, and the said plat to be a true delineation thereof and of the tract claimed by your petitioners by virtue of the aforesaid grant.

16th. That, other than as hereinbefore set forth, the matter of the said provate land claim has not been acted upon by or under the authority of Congress.

17th. That there are no gold or silver mines or lodes or minerals of the same within the limits of the said grant to the knowledge of your petitioners, and they therefore allege that there are none.

18th. That the grant document or expedient' of the said grant is an instrument authenticated and made in accordance with the laws, usages, and customs then in force, and the said grant was, at the time of the acquisition of this Territory by these United States, definitive, complete, and perfect, all conditions imposed in the grant having been complied with, and by reason thereof the same did not pass from Mexico to the United States by the treaty of cession, not being any part of the public domain of Mexico at the date of said treaty and transfer.

18th. That M. Z. Farwell, as the grantee of S. S. Farwell, and one Henry Buckman are in the occupation without right of certain portions of said grant under their said pretended claim of right to the whole
6 of the said grant and be reason thereof adversely to your petitioners; wherefore they are made defendants hereto.

SEC. 2. That Jesus Maria Barela, one of the grantees of the said tract, died A. D. 18 without having disposed of his interest therein, leaving as issue his son, Isidor Barela; that said Ysidor died A. D. 18 without having disposed of his interest in said grant, and leaving as his heirs and legal representatives your petitioners, to wit, his wife Maria del Refugio Maestas, and his son Donaciano Barela; that Jose Bernardo Torres, one of the grantees of the said tract, died A. D. 18 without having disposed of his interest therein, leaving as his surviving issue and legal representative his son, Jose Maria Torres, who died A. D. 18 without having disposed of his interest in the said tract, and which interest is held and represented by your petitioner Jose Benedicto Torres; that your petitioner Jose Toedosio Pena is the legal representative of the interest of Francisco Valdez, one of the grantees of said tract; that your petitioner Dionisio Torres is a son of Carlos Torres, one of the grantees

of said tract, and is his legal representative; that your petitioner Antonio Rito Torres is the son of Manuel Torres, one of the original grantees of said tract, and is his legal representative; that your petitioner Maria Antonio Trujillo is a daughter of Jose Trujillo, one of the grantees of the said tract, and is his legal representative; that your petitioner Jose Ma. Lucero is the legal representative and owner in part of the interest of Eusebio and Antonio Chavez, grantees of said tract.

That your petitioners Pantaleon and Juan Pascual Martinez are the legal representatives and owners of the interest of Miguel Trujillo, one of the grantees of this said tract; that your petitioner Fermin Roibal is the legal representative and owner of the interest of Jose Antonio Roival, one of the original grantees of the said tract; that your petitioner Deciderio Ortiz is the legal representative and owner of the interest of Elauterio Ortiz, one of the original grantees of the said tract.

That your petitioner Antonio Serafin Pena is the legal representative and owner of the interest of Mariano Pena, one of the grantees of the said tract.

Wherefore your petitioners pray that the validity, extent, and location of the said grant of La Petaca may be inquired into and decided by this court, and that the same may be by your decree established, confirmed, and set apart unto the heirs and legal representatives of all the persons named and designated in the act of juridical possession as grantees and beneficiaries and in accordance with the meet's, bounds, and natural objects in the said act of possession set forth, and that they may be granted such other and further relief as in equity and justice to the court shall seem meet.

GEO. HILL HOWARD,
JEFFRIES & EARLE,
Counsel for Petitioners.

7 And be it further remembered that, to wit, on said 17th day of February, A. D. 1893, Executive Document No. 31 of the U. S. Senate, 44th Congress, was filed with the petition of claimants in case No. 99, filed as Ex. B; which said exhibit is in the words and figures following, to wit:

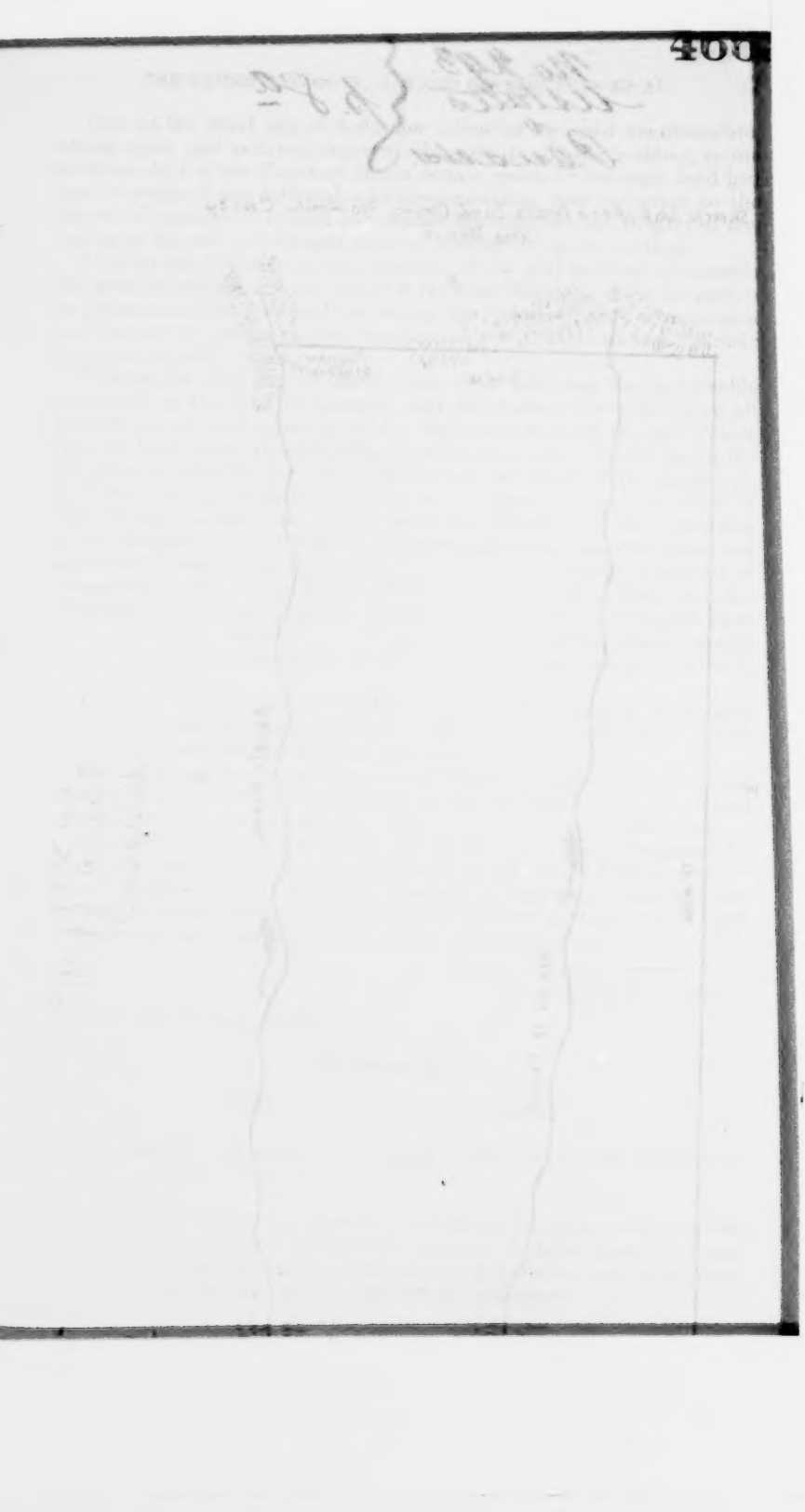
Transcript of grant to Jose Julian Martinez et al., being private land claim reported as No. 105, for land in Rio Arriba County, New Mexico, known as the Petaca grant; date of grant, February 25, 1836; reported by the United States surveyor-general February 20, 1875.

Claimants' petition.

Hon. JAMES K. PROUDFIT,
United States Surveyor-General of New Mexico:

Your petitioners, the heirs and legal representatives of the parties named as grantees in the accompanying original concession of land, respectfully represent:

That on the 29th day of January, 1836, one Jose Julian Martinez and Francisco Antonio Atencio and his sons made written application to the ayuntamiento of the district for a grant to a piece of land known as the Petaca tract, on the Ojo Caliente River, situate in the present county of Rio Arriba, in this Territory of New Mexico, then one of the territorial political divisions of the Republic of Mexico.



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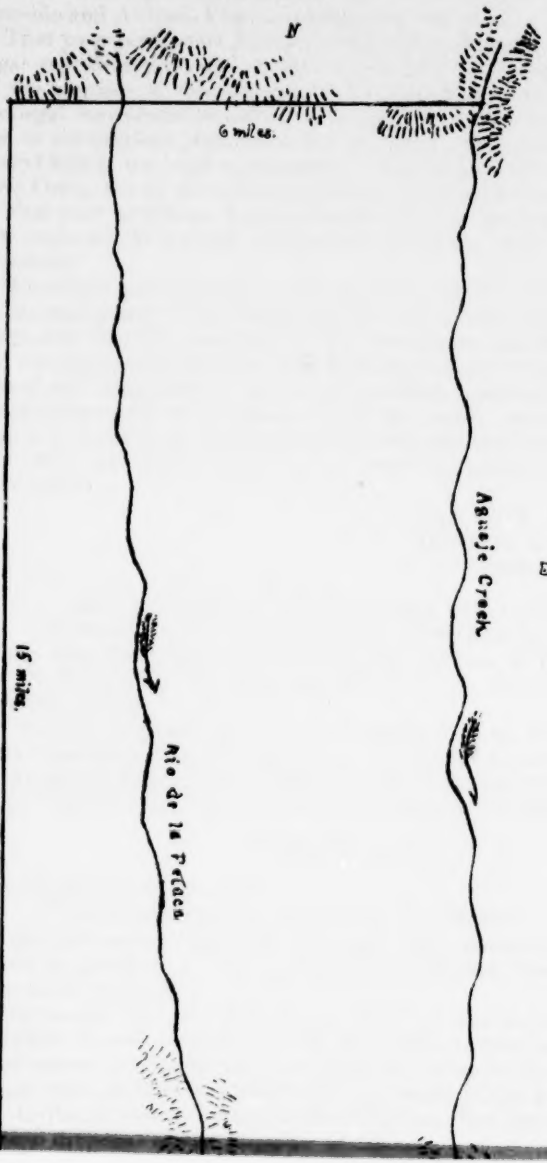
Sketch Map of the Peraca Land Grant, Rio Arriba County. New Mexico.



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Peralta }

That on the 22nd day of February following the said ayuntamiento, acting upon said petition, reported, through its presiding officer, to the political chief of the Territory that a certain grant for the same land had been abandoned and forfeited, and recommending that the grant to the same land applied for by said Jose Julian Martinez be made as prayed for, except to the sons of Atencio, minors, referred to in the petition.

That on the 25th day of the same month the said political chief made the grant as prayed for, and directed the local alcalde to place the parties in possession of the land and file among the archives the act of possession and furnish the parties on their application a testimonio thereof for their evidence of title.

That on the 25th day of March then next following the said alcalde proceeded to the land in question, and the parties interested being all present, placed said grantees in due legal possession of the said Petaca tract of land, under the following boundaries, to wit: On the north the hill commonly called Tio Ortiz; on the east the creek of the Agueje de la Petaca; on the south the entrance to the canoncito and the lands of Jose Miguel Lucero, and on the west the boundary of the Vallecitos grant, designating to each of the following grantees a specified piece and quantity of land within said general limits and as set forth in said act of possession, to wit: Felipa Jaquez, Menual Lujan, Mariano Pena, Antonio Eleuterio Ortiz, Jose Francisco Lucero, Jose Antonio Lucero, and Juan de Jesus Jaquez, to whom and the other parties named in said
8 annexed list said grant of the Petaca tract was made and executed as aforesaid.

That your petitioners herewith file the original document in Spanish in evidence, with a sworn translation thereof in English, and a sketch map of the land claimed by your petitioners.

That your petitioners and those under whom they claim have been and continued in the uninterrupted legal possession and enjoyment of said granted premises, and know of no claim thereto adverse to their own.

Your petitioners ask that their title to said land be investigated by your honor and approved under the treaty of Guadalupe Hidalgo and the act of Congress of July 22, 1854, establishing your office; and they also pray that the title thereto be confirmed by Congress to the heirs and legal representatives of the grantees named in said original document.

SAM'L ELLISON,
Attorney for Petitioners.

(Here follows map marked p. 8.)

Muniments of title.

Sello tercero (sello). Dos reales.

Para los anos de mil ochocientos trienta y seis y ochocientos trienta seis y siete.

RESPECTABLE AYUNTAMIENTO: Jose Julian Martinez, vecino de esta jurisdiccion, ante V. S. y en union de mi padre Antonio Martinez, Francisco Antonio Atencio, e hijos del ultimo, con la submision que corresponde y bajo los protestos mas legales representamos diciendo.

Que siendo nuestra intencion jirar por la recomendable ocupacion de la agricultura, para de este modo auxiliar a la sostencion de neustras familias, y satisfechos que rio arriba de esta jurisdiccion esta un terreno valdio, el cual le llaman la Petaca; suplicamos a V. S. que en caso que no haya perjuicio de tercero ni reconosca propiedad en dicho terreno ningun individuo, se sirva V. S. hacer las indagaciones que a bien tenga, e informar a la E. diputacion provincial lo que crea conveniente en el particular anexo a neustra solicitud; que es gracia que impetramos.

JOSE JULIAN MARTINEZ.

OJO CALIENTE, *Enero 29 de 1836.*

El respectable ayuntamiento que tengo el honor de presidir, en consecuencia de que los contenidos en la mercen que acompana a la presentacion que antecede no han cultivado ni puesto clase alguna de industria en el terreno que se les dio, y que ahora nuevamente se solicita, en el largo tiempo de 12 anos corrientes, opina que a los nueves solicitantes se les debe conceder en virtud de que aquellos por la causa espresada han perdido el derecho con que se les agracio; bajo las condiciones que
9 en dicha merced se espresan, advirtiendo que tambien cree este ayuntamiento que los hijos de Francisco Antonio Atencio no deben entrar en parte de la referida posesion, por cuanto son menores de edad, sujetos a patria potestad y sin el conocimiento necesario para permitir ni dar poder para que en su nombre se pida lo que ellos no estan en estado de adquirir por esta via.

La excelentisima diputacion dispondrá lo que sea mas arreglado á las leyes.

JOSÉ ANTONIO MARTINEZ.

OJO CALIENTE, *Febrero 22 de 1836.*

JOSÉ JULIAN MARTINEZ, *Secretario.*

SANTA FÉ, *Febrero 25 de 1836.*

Visto el acuerdo del ayuntamiento del Ojo Caliente, fecha 22 del corriente, en que dice no haber obice para que al impetrante y socios se les done el terreno que se cita, mismo á que no tienen derecho los anteriormente mercenados en él, por haberlo abandonado. El alcalde del citado punto pondrá en posesion á los que ahora lo pretenden bajo la formula requerida, y con arreglo á la ley de la materia estendiendo la donacion general, en que presisamente debe constar los linderos de dicha posesion, y sin perjuicio de tercero, sinendo igualmente á los agraciados á las obligaciones prescritas por las leyes para adquirir derecho, á cuyo fin el alcalde recojerá el documento general del reparto q. será para el archivo, y de este dará los testimonios que le pidieren previos sus derechos correspondientes.

PEREZ.

Sello cuarto (sello). Una cuartilla.

Para los años de mil ochocientos trienta y seis y ochocientos trienta y siete.

En Santa Cruz del Ojo Caliente, jurisdiccion de este nombre, á los veinte cinco dias del mes de marzo de mil ochocientos trienta y seis. En

cumplimiento del decreto del senor gefe politico y militar de este territorio de Nuevo Mejico, Don Alvino Perez, fecha 25 de febrero del mismo año, en que me ordena poner en posesion á los impetrantes que solicitan el terreno de la Petaca, y segun consta por su presentacion de 29 de enero del mismo año, pasé y repartí dicho terreno con presencia de los interesados, dándole á cada uno de los que constan en la lista de á ciento y cincuenta varas á linea recta, dándoles los linderos por el sur en la puerta del cañoncito y tierras de José Miguel Lucero, por el norte la loma que comunmente llaman de Tio Ortez y por el oriente el aroyo de las aguajes á la Petaca, por el poniente hasta donde sujeta la merced del Vallecito, en cuyo ambito se colocaron los nuevamente mercenados, solo si de estos le doné al C. Felipe Jaquez, desde el lindero de Vicente Martin hasta el lindero de Eusebio Chaves, por sur una angostura de poca utilidad; en seguida al C. Manuel Lujan dos anconcitos sin medir; continué á la reparticion para el cañoncito citado y le doné al C. Mariano Pena dos anconcitos muy estrechos; sin varear proseguí y doné en el mismo cañonocito al C. Antonio Eusebio Ortiz un anconcito, tambien sin varear; siguienno la misma ruta por el mismo cañoncito le doné al C. José Francisco Lucero un aconcito; tambien sin varear, y al C. José Antonio Lucero otro aconcito y siendo el lindero por el sur de este ultimo la boca del mismo cañoncito, dejándoles para plaza ciento y cincuenta varas, y para huertas las mujeres cincuenta, y cincuenta para entradas y salidas, quedano por abrevadero comun en la puerta de la cañada de la Dorada ciento y cincuenta varas a linea recta, cuya donacion hize en el nombre de la soberania nacional, con arreglo a la ley de la materia, quedando entendidos los mercenados que constan en la adjunta lista, que los pastos, montes, aguas y abrevaderos son comunes, haciéndoles ver que el que no ocupare y cultivare el terreno que se le agracio dentro del termino de cinco anos, para adquirir el derecho, no podrá vender, trocar ni enajenar, ni ser admitido en nueva poblacion, y si por si abandonare el sitio, queda advertida de no tener derecho por demandarlo asi la ley. Y entendidos y convenidos de todo esto, recibieron la recibida posesion, en cuya virtud arrancaron yerbas, pegaron brincos, tiraron piedras y dieron voces de alegria, diciendo viva Dios y viva la nacion y el soberano congreso, y la ley que nos rije, que nos ampara y otras voces de regocijo, en cuya virtud tomaron la posesion.

Y para que en todo tiempo conste por este decreto, firmé la presente merced y donacion con cuanta facultad tubo á bien señoria darme para el efecto de la arriba peticion, segun consta por el decreto ya citado, el que queda adjunta en la presente merced; siendo testigos los C. C. Jesus Ma. Barela y José Francisco Lucero, segun lo hecho por conveniente.

JOSÉ ANTONIO MARTINEZ.

JESUS MA. BARELA.

PA. DA.—A Juan de Jesus Jaquez, se le dió del lindero de José Grabiel Virgil hasta un pinbete que está al norte. Vale.

Lista de los C. C. que tomaron posesion en el terreno de la Petaca, segun consta que está en la merced que está al otro lado, a saber:

Miguel Trujillo, Juan de Jesus Olguin, Lorenzo Griego, Francisco Valdez, Francisco Vigil, Juan de Jesus Vigil, Joaquin Martin, Jesus

Ma. Barela, José Antonio Lucero, José Grabiel Vigil, Juan de Jesus Jaquez, Juan de los Reyes Sena, Carlos Torres, Antonio Feliciano Martin, José Bernardo Torres, Benito Martin, Felipe Jaquez, Eusebio Chaves, Antonio José Martin, Antonio José Chaves, Sabino Chaves, Antonio Martin, Francisco Antonio Atencio, José Julian Martin, José Julian Sanchez, Amador Sanchez, José Antonio Roival, Juan Antonio Chaves, Antonio Trujillo, José Trujillo, José Ma. Jaquez, Manuel (borrado) . . . Mariano Peña, Eluterio Ortiz, José Francisco Lucero, José Antonio Lucero.

11 *Translation of muniments.*

Seal third (seal). Two reals.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

RESPECTABLE AYUNTAMIENTO: I, Jose Julian Martinez, resident of this jurisdiction, appear before your honor and, together with my father, Antonio Martinez, Francisco Antonio Atencio, and the sons of the latter, with all submission and under the most legal protestations, represent and state—

That it being our intention to engage in the recommendable occupation of agriculture, so as by this mode to aid in the support of our families, and being satisfied that up the river from this jurisdiction there is a tract of public land which is called the Petaca, we therefore pray your honor that, in case no injury would result to any third party, and you know of no individual owning said land, which your honorable body will please ascertain, and inform the illustrious provincial deputation whatever you may deem proper in respect to our application, which is a favor we solicit, &c.

JOSE JULIAN MARTINEZ.

OJO CALIENTE, *January 29, 1836.*

The respectable ayuntamiento, over which I have the honor to preside, inasmuch as that the parties in the grant accompanying the foregoing petition have not cultivated nor placed any kind of improvements on the land which was given them in the long period of full twelve years, and which is now again applied for, are of opinion that the same should be granted to the new applicants for the reason that the former have forfeited the right granted them for the cause stated and under the conditions expressed in said grant; observing that this ayuntam'ento also believe that the children of Francisco Antonio Atencio should not become a party in the said possession, as they are minors, subject to paternal control, and do not possess the knowledge necessary to empower or give authority to petition in their names for that which they are not in a condition to acquire in this manner.

The most excellent deputation will direct as may be most in accordance with the laws.

JOSE ANTONIO MARTINEZ.

OJO CALIENTE, *February 22, 1836.*

JOSE MANUAL MARTINEZ, *Secretary.*

SANTA FÉ, *February 25, 1836.*

Having seen the action of the ayuntamiento of Ojo Caliente of date 22d instant, in which they say there is no objection to granting the applicant and his associates the land mentioned, the former grantees not possessing now any right therein, they having abandoned the same, the
12 alcalde of said place will place those who now apply for the same in possession thereof in the required form and in conformity with the law on the subject, setting forth the general donation, in which shall necessarily be stated the boundaries of said possession, and without prejudice to any third party; also binding the grantees to the obligations prescribed by the laws to acquire title, for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom, as may be requested of him, on payment of his corresponding fees.

PEREZ.

Seal fourth (seal). One cuartilla.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

At Santa Cruz del Ojo Caliente, jurisdiction of this name, on the twenty-fifth day of the month of March, one thousand eight hundred and thirty-six, in compliance with the decree of the civil and military governor of the Territory of New Mexico, Alvino Perez, of date February 25th of the same year, in which he directs me to place in possession the petitioners who have applied for the Petaca tract of land, and as is set forth in their petition of date of 29th of January of the same year, I proceeded to distribute said land in the presence of the parties interested, giving to each one of those mentioned in the list one hundred and fifty varas in a direct line, designating to them as their boundaries on the south the entrance to the canoncito and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz Hill, on the east the track of the aguaji of the Petaca, and on the west the boundary of the Vallecito grant, within which limits the said new grantees were located. Of these I donated only to the citizen Felipe Jaquez from the boundary of Vicente Martin to that of Eusebio Chaves, the land being a narrow strip and of little utility; thereupon I donated to Citizen Manuel Lujan two small valleys, which were not measured with the line and reach to the distribution of the said canoncito, and I donated to Citizen Mariano Pena two small vayleys, very narrow, without varying; and, continuing, I donated to Citizen Antonio Eluterio Ortiz, in the same canoncito, a small valley, also without varying; following the same course in the said canoncito, I donated to Citizen Jose Francisco Lucero a small valley, also without varying, and to Jose Antonio Lucero another small valley, the boundary thereof being on the south the mouth of the same canoncito, leaving them for a plaza one hundred and fifty varas, and fifty for women's gardens and fifty for ingress and egress, there remaining at the mouth of the canada de la Dorado, for common watering places, one hundred and fifty varas in a direct line, which donation I made in the name of the national sovereignty, in conformity with the law on the subject, the grantees mentioned

in the annexed list understanding that the pastures, forests, waters, and watering places are in common, and they were further informed that he who fails to occupy and cultivate the land granted within the
13 term of five years, in order to acquire title, the same can not be by him sold, exchanged, or alienated, nor will he be admitted in a new settlement, and if any should of their own accord abandon the tract, they remain informed further that they possess no right, such being the requirements of law; and being informed of and agreeing to all this, they received the accepted possession, in virtue of which they plucked up herbs, leaped, cast stones, and shouted with joy, saying, God be praised, long live the nation, long live the sovereign congress and the law that governs and protects us, and other manifestations of pleasure, by virtue of which they took possession; and, that it may so appear at all times, I, under this decree, signed this grant and donation with all the authority His Excellency was pleased to confer upon me for the purpose set forth in the above petition and expressed in said decree attached to the present grant, the witnesses being the citizens Jesus Maria Barela and Jose Francisco Lucero, as properly made.

JOSE ANTONIO MARTINEZ.

JESUS MARIA BARELA.

P. S.—There was given to Juan de Jesus Jaquez from the boundary of Jose Grabiel Vigil's to a pinobeta on the north; is valid.

[RUBRIC.]

List of the citizens who took possession of the Petaca grant of land, as set forth in the grant, on the other side of this, to wit:

Miguel Trujillo, Juan de Jesus Olguin, Lorenzo Griego, Francisco Valdes, Francisco Vigil, Juan de Jesus Vigil, Joaquin Martin, Jesus Maria Barela, Jose Antonio Lucero, Jose Grabiel Vigil, Juan de Jesus Jaquez, Juan de los Reyes Sena, Carlos Torres, Antonio Feliciano Martinez, Jose B. Torres, Benito Martin, Felipe Jaquez, Eusebio Chaves, Antonio Jose Martinez, Antonio Jose Chaves, Sabino Chaves, Antonio Sanchez, Amador Shancez, Jose Francisco Ribal, Juan Antonio Chaves, Antonio Trujillo, Jose Trujillo, Jose Ma. Jaquez, Manuel (defaced), Mariano Pena, Luterio Ortiz, Jose Francisco Lucero, Jose Antonio Lucero.

The foregoing translation made by me from the Spanish is correct, to the best of my knowledge and belief.

SAM'L ELLISON.

Subscribed and sworn to before me this 12th day of February, 1875.

JAMES K. PROUDFIT,
United States Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATORS' DEPARTMENT,
Santa Fe, N. Mex., February 18, 1875.

The foregoing translation having been by me compared with the original in Spanish and found correct is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

14 *Testimony of witnesses.*

Jose Julian Martinez et al.—The Petaca tract of land.

SERAFIN PENA, being by the surveyor-general first duly sworn, on his oath declares:

Question (by Samuel Ellison, attorney for claimants). What is your name, age, occupation, and place of residence?

Answer. My name is Serafin Pena; my age is about 50 years; my occupation is farmer, and my residence is at the town of Petaca, Rio Arriba County, New Mexico.

Question. Do you know a tract of land in that county known as the Petaca grant? If so, please state what you know about the claim or title to that land generally.

Answer. I know such a tract of land in that county, situated upon the Petaca River above the town Servilleta, that river running northwardly into the Ojo Caliente River; the town of Petaca, which contains about 30 heads of families, standing upon the west bank of the Petaca River and within the said Petaca land grant. I have known the place all my life. The grant has always been settled and occupied, except when on several occasions the inhabitants were driven off by hostile Indians, though on these occasions they always returned to their homes and avocations there. Said town of Petaca was as such in existence at the time of the occupation of New Mexico in 1846 by the military forces of the United States, and at the date of the treaty of Guadalupe Hidalgo, in 1848. I have examined the list of the Petaca settlers and grantees now handed me by the surveyor-general, and well remember all of them personally, with very few exceptions, as residents and settlers at said Petaca about 40 years ago. Most of them are now dead, but their descendants and successors still live there, and those of them not dead still reside there, and, with their children, cultivate the land. I do not know the boundaries of the Petaca grant, except as I have heard them stated by common report, and do not recollect how I have thus heard them well enough to repeat them now.

Question (by the surveyor-general). Do you know of any mines or mineral-bearing land within said grant, as you understand its limits?

Answer. I know of no mine or mineral-bearing soil therein.

Question. Have you any land within said grant or are you in anywise interested in this claim?

Answer. I have no land therein and am in no manner or degree interested in this claim.

SERAFIN (his x mark) PENA.

Sworn to and subscribed before me this February 12th, 1875.

JAMES K. PROUDFIT,
Surveyor-General.

15 JOSE ISIDRO VARELA, being first duly sworn by the surveyor-general, on his oath declares:

Question (by Mr. Ellison). What is your name, age, occupation, and residence?

Answer. My name is Jose Isidro Varela; my age is 43 or 44 years; my occupation is farmer, and my residence at the town of Petaca, Rio Arriba County, New Mexico.

Question. Are you acquainted with the tract of land in that county commonly called the Petaca grant? If so, please state what you know in the premises of this claim for the land by the inhabitants of that place.

Answer. I know a tract of land there commonly so called. It lies about 20 miles north of the town of Ojo Caliente and upon both sides of the Petaca River, the town of Petaca within the tract standing upon the west margin and containing somewhat more or less than 30 families, some of which families are those of the original grantees from the Mexican Government for the land of the Petaca grant here in question. I have known the place all my life, having been born in the vicinity of and lived upon the tract. The town of Petaca, except when the hostilities of the wild Indians occasionally compelled a retreat to localities of security, has always been settled and occupied by its inhabitants, and when thus temporarily abandoned the people always returned to live there. With these exceptions (temporary abandonments) the town has always since I have known it been an existing one, and is now a flourishing village. I have heard the boundaries of the Petaca grant mentioned among the settlers, but do not know them to be such and do not remember them well enough to repeat them now.

Question (by the surveyor-general). Do you know of any mine or any mineral land inside the limits of the Petaca grant as you understand the extent of the tract?

Answer. I know of no mine or mineral-bearing ground anywhere in the grant or its vicinity.

Question. Are you the owner of any land in said Petaca tract, or have you any interest in this claim for said tract of land?

Answer. I am not the owner of any land therein, nor am I in anywise interested in that claim.

JOSE ISIDRO BARELA.

Sworn to and subscribed before me this February 12th, 1875.

JAMES K. PROUDFIT,
Surveyor-General.

Surveyor-general's opinion.

OPINION.

This claim for land is brought before me under the 8th article of the treaty of Guadalupe Hidalgo and the 8th section of the act of Congress of July 22, 1854, establishing this office.

It appears from the record that on the 29th day of January, 1836,
16 Jose Julian Martinez, for himself and others, presented to the ayuntamiento of Ojo Caliente a petition for a grant of the land in question for the purposes of agriculture; that on the 22nd day of February, 1836, that body recommended that the concession be made, after denouncing a previous grant for abandonment; that on the 25th day of February, 1836, Perez, then political chief of New Mexico, under the Republic of Mexico, granted the premises to said Jose Julian Martinez

and others, and directed the alcalde of Ojo Caliente to place the grantees in possession, and that on the 25th day of March, 1836, the alcalde, Jose Antonio Martinez, complied with this direction. It seems that the original grantees and their legal representatives have held and occupied the premises ever since they first took possession, except when driven off by hostile Indians, and are now in undisputed possession.

I have no doubt that the papers of original title are genuine, and that the present claimants are acting in good faith. I therefore reccommend that this grant be confirmed to Jose Julian Martinez and others named in the act of possession, or their legal representatives, by Congress.

I transmit the complete record in triplicate.

JAMES K. PROUDFIT
United States Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. Mex., February 20, 1875.

Authentication of transcript.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. Mex., July 31, 1875.

The foregoing 24 pages contain a correct transcript of the original papers on file in this office in private land claim reported as No. 105, in the name of Jose Julian Martinez et al.

JAMES K. PROUDFIT,
United States Surveyor-General.

And be it further remembered that thereafter, to wit, on the 1st day of March, A. D. 1893, there was filed in the office of the clerk of said court, in Santa Fé, in the Territory of New Mexico, a petition, which said petition is in the words and figures following, to wit:

In the United States Court of Private Land Claims, sitting within and for the Territory of New Mexico.

L. Z. FARWELL AND M. Z. FARWELL
vs.
THE UNITED STATES OF AMERICA. } No. 153.

To the Honorable Joseph R. Reed, chief justice, and the associate justices of said court:

Your petitioners, L. Z. Farwell and M. Z. Farwell, respectfully represent and show unto your honors that they are citizens of the United States and residents of the State of Colorado.

17 That they are the owners of the tract of land situated in the counties of Rio Arriba and Taos, in the Territory of New Mexico, hereinafter described.

That they have acquired the same by purchase and mesne conveyances from the heirs and descendants and successors in interest of the original owners and grantees of said tract of land known as the "Petaca tract," which was originally granted to Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, petitioners therefor, by the civil and

military governor, Alvino Perez, governor of New Mexico, on the 25th day of February, 1836, and of which tract of land the said petitioners were duly placed in juridical possession on the 25th day of March of the same year by Jose Antonio Martinez, in which they, their heirs and descendants, and the grantors of your petitioners have remained in full, undisturbed, quiet, and peaceable possession since that time until this present, under the following boundaries, which were named to them and their predecessors in right in the act of juridical possession, viz: On the south the entrance to the canoncito and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz hill, on the east the creek of the Aguaje of the Petaca, and on the west the boundary of the Vallecito grant.

That said lands and tract *is* within the limits of the territory derived by the United States from the Republic of Mexico, and now embraced within the Territory of New Mexico by virtue of such Mexican grant, and such an one as the United States is bound to recognize and confirm by virtue of the treaty of cession of said country by the Republic of Mexico to the United States, and at the date of the passage of the act of Congress creating this court (March 3, 1891) had not been confirmed by act of Congress or otherwise finally decided upon by lawful authority.

That no other person is in possession of or claiming the same or any part thereof otherwise than by permission of your petitioners.

That the quantity of land claimed by your petitioners in such tract is one hundred and eighty-six thousand nine hundred and seventy-seven and eleven one-hundreths acres, bounded and situated as above described, a map of which, showing the same as near as may be, is filed herewith and referred to as Exhibit "A."

That the said claim was heretofore submitted to the Honorable James K. Proudfit, surveyor-general of New Mexico, and by him reported, as private land claim No. 105, favorably to Congress for confirmation on February 20, 1875.

That the same claim, by the same number, was again reported upon favorably for confirmation to the said original grantees and their heirs by the Honorable Henry M. Atkinson, surveyor-general of New Mexico, on August 1st, 1883, and that an additional report was made by Honorable William A. J. Sparks, Commissioner of the General Land Office, on January 21st, 1887, stating that the then surveyor-general, Honorable George W. Julian, recommended confirmation of said claim to the extent of the lands actually occupied and cultivated, but that no further
18 action with reference to the confirmation of the same has been had by Congress or under its authority, but under these various recommendations the said tract was authorized to be and has been surveyed according to the plat filed herewith.

That your petitioners do not file herewith the original documents constituting or creating such grant for the reason that the same are now on file with the surveyor-general of New Mexico, in the archives of his office, and that that officer will not deliver the same to your petitioners, but that your petitioners file herewith certified transcripts, in duplicate, of the same in the Spanish language, marked Exhibit "B," and certified translations thereof into the English language, in duplicate, marked Exhibit "C."

Wherefore your petitioners pray that the validity of their title and claim to such tract of land my be inquired into and decided by this court and the same be confirmed, and for such other and further relief as to the court may seem equitable and just.

And your petitioners will ever pray.

L. BRADFORD PRINCE and
EDWARD L. BARTLETT,
Sol's for Petitioners.

And be it further remembered that thereafter, to wit, on the 3rd day of March, A. D. 1893, there was filed in the office of the clerk of said court, at Santa Fé, in the Territory of New Mexico, a petition, which said petition is in words and figures following, to wit:

UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting in the city of Santa Fé, New Mexico.

JOSE A. GARCIA, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT.

To the Honorable Joseph R. Reed, chief justice, and to the associate justices of said court:

Jose A. Garcia, a citizen of the United States and resident of the county of Conejos, in the State of Colorado, plaintiff, brings this his petition against The United States of America, defendant, and thereupon represents and shows unto this honorable court as follows:

That on the 29th day of January, 1836, Jose Julian Martinez petitioned the ayuntamiento of Ojo Caliente to ascertain the status and condition of a certain tract of land within the jurisdiction of the said ayuntamiento and to report their findings in the premises to the provincial deputation; that thereafter, on the 22nd day of February, 1836, the said ayuntamiento, through its president, Jose Antonio Martinez, made report to the said deputation in the premises, recommending that the said tract of land be granted to the applicant, Jose Julian
19 Martinez, and his copetitioners; that thereafter, on the 25th day of February, 1836, Albino Perez, governor of the Territory of New Mexico, made the said grant to the said Jose Julian Martinez and his associates, the tract of land mentioned, and directed the alcalde of said place to place them in juridical possession of the same.

That thereafter, on the 25th day of March, 1836, Jose Antonio Martinez, by virtue of said decree of said Albino Perez, placed the said Jose Julian Martinez and thirty-five others, citizens, in juridical possession of the said Petaca tract of land, within the following boundaries, to wit:

On the south the entrance of the canoncito and land of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz hill, on the east the tract of the Aguaji of the Petaca, and on the west the boundary of the Vallecito grant.

That the original papers and documents relating to this grant of land aforesaid are now on file in the office of the surveyor-general of the Territory of New Mexico, known in that office as reported private land claim No. 105, Petaca. Said papers are not within the control of the plaintiff, so that he can't file them herewith. A copy of the said original documents which are in the Spanish language, in duplicate, together with a translation of the same, also in duplicate, is herewith filed and marked "Exhibit A" and made a part of this petition.

On the 20th day of February, 1875, the surveyor-general of the Territory of New Mexico recommended the said grant for confirmation by the Congress of the United States, recommending that the said grant be confirmed to Jose Julian Martinez and the others named in the act of possession or their legal representatives.

His opinion and the proper papers, as required by law, were transmitted through the proper channels for the action of the Congress of the United States on said date. A preliminary survey of this tract of land was made under the direction of the General Land Office. A plat of said survey is now in the records of the office of the said surveyor-general, and a sketch map of the said grant, showing its boundaries as set forth in the original grant papers, is filed herewith and marked "Exhibit B."

(Here follows map marked p. 19a.)

The lands embraced within the limits of said grant contain no known mines of minerals—of gold, silver, or quicksilver.

Your petitioner is the owner in fee in and to an interest in the said tract of land by purchase frmo one of the original grantees, Juan Jesus Jacques, and also other original grantees in said grant. There are other persons—heirs, assigns, and legal representatives and original grantees—living on the said tract, holding and claiming interests in and to the same in the same manner as the petitioner, but there is no conflict or question of title of any kind between them and the petitioner.

There are no persons in possession of or claiming said grant of
20 land or any part thereof otherwise than in harmony with the petitioner.

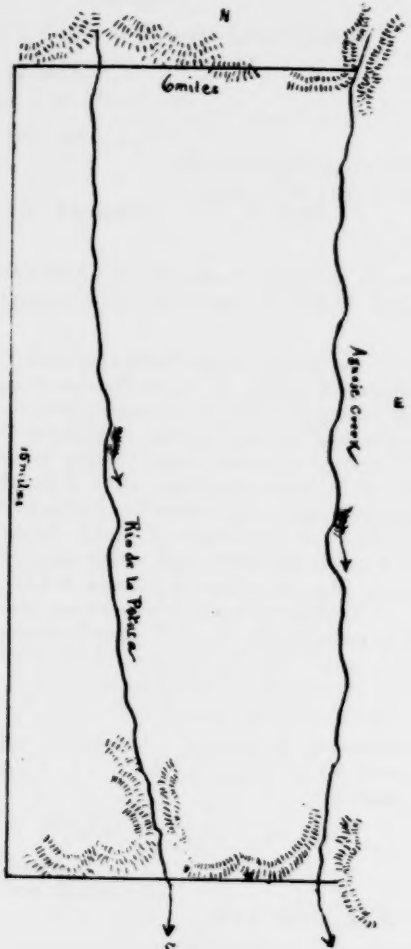
Your petitioner, therefore, prays that this, his petition, be considered by this honorable court and the validity of said grant so made, as aforesaid, be enquired into and decided, and that the said tract and grant of land, with the boundaries as set forth in the original documents making said grant, be confirmed unto your petitioner and the legal representatives of the original grantees forever, and for such other and general relief as to this honorable court may seem meet and proper, and as the nature of the case may require.

CHAS. A. SPIESS,
Attorney for Petitioner.

No. 293
U. States
v.
Peralta.
} p. 19a

- Sketch Map -

Petaco Land Grant.



No 304
Peralta
U. States
} p. 30.

And be it further remembered that, to wit, on the 22nd day of February, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

ANTONIO SERAFIN PEÑA ET AL., plaintiff",
versus
THE UNITED STATES OF AMERICA, defendant.

Petition filed in the clerk's office this 17th day of February, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, esq., attorney for the United States before the Court of Private Land Claims, greeting:

You and each of you are hereby notified that an action has been brought in said court by Antonio Serafin Peña et al., plaintiff", against you as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff" is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff" will take default according to the provisions of the aforesaid act.

Witness the honorable Joseph R. Reed, chief justice of the Court
21 of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 22d day of February, A. D. 1893, and of the Independence of the United States the 117th year.

[Seal Court of Private Land Claims, Santa Fe, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

Proof of service.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

MAY 24TH, A. D. 1893.

I hereby certify that I received the within writ on the 24th day of May, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

Served on me at St. Louis, Mo., this the 28 day of M'ch, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned April 21st, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's fees:

Service,	defendants, at $2	$
Mileage,	miles, at 6c., going only	
Summons		4.00
Total		$4.00

Paid by

And be it further remembered that, to wit, on the 24th day of March, A. D. 1893, a summons was issued by the clerk of said court, which said summons, with all endorsements thereon, is as follows, to wit:

22 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

L. Z. FARWELL AND M. Z. FARWELL, plaintiff', *versus* THE UNITED STATES OF AMERICA, defendant. } Petition filed in the clerk's office this 1st day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, esq., attorney for the United States before the Court of Private Land Claims, greeting:

You and each of you are hereby notified that an action has been brought in said court by L. Z. Farwell and M. Z. Farwell, plaintiff', against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff' is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff' will take default according to the provisions of the aforesaid act.

Witness the honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fé, in said district, this 24th day of March, A. D. 1893, and of the Independence of the United States the 117th year.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

Proof of service.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

APRIL 1ST, A. D. 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

Served on me this 1st day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

23 This writ therefore returned April 21st, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal,*
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's fees:

Service,	defendants, at $2	$
Mileage,	miles, at 6c., going only	
Summons		4.00
Total		4.00

Paid by

And be it further remembered that, to wit, on the 27th day of March, A. D. 1893, a summons was issued by the clerk of said court; which said sentence, with all endorsement' thereon, is as follows, to wit:

Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

JOSÉ A. GARCIA, PLAINTIFF,
versus
UNITED STATES OF AMERICA, DEFENDANT.

Petition filed in the clerk's office this 3d day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, esq., attorney for the United States before the Court of Private Land Claims, greeting:

You and each of you are hereby notified that an action has been brought in said court by José A. Garcia, plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed

in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the honorable Joseph R. Reed, chief justice of the
24 Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 27th day of March, A. D. 1893, and of the Independence of the United States the 117 year.

[Seal Court of Private Land Claims, Santa Fe, New Mexico.] JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

Proof of service.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

SANTA FE, *4, 22, A. D. 1893.*

I hereby certify that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

Served on me this the 10 day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned by me, as the law directs, this 22d day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's fees:

Service,	defendants, at $2	$
Mileage,	miles, at 6c., going only	
Summons		4.00
Total		$4.00

Paid by

And be it further remembered that thereafter, to wit, on the 26 day of June, A. D. 1894, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss.

In the Court of Private Land Claims, Santa Fe district, August term, 1894.

L. Z. FARWELL AND M. Z. FARWELL, plaintiffs, *vs.* UNITED STATES, DEFENDANT. } No. 153. Petaca grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

25 That for aught it knows to the contrary the matters and things in said petititon alleged may be true, but, having no knowledge or

information sufficient to enable it to form a belief as to whether they are true and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiffs be put to their proof of all the allegations therein contained, as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

And be it further remembered that thereafter, to wit, on the 26th day of June, A. D. 1894, an answer was filed in the office of the clerk, which said answer is in the words and figures following to wit:

UNITED STATES OF AMERICA, ss.

In the Court of Private Land Claims, Santa Fé district, August term, 1894.

ANTONIO SERAFIN PENA ET AL., plaintiffs, *versus* UNITED STATES, DEFENDANT. } No. 99. La Petaca grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary the matters and things in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether they are true and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiffs be put to their proof of all the allegations therein contained, as provided they shall be by the act of Congress approved March 3rd, 1891, under which this court assumes jurisdiction of this controversy, and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claims for said alleged grant and dismissing the petition, and for such other orders as to the court may seem
26 meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

And be it further remembered that thereafter, to wit, on the 26th day of June, A. D. 1894, an answer was filed in case No. 233, in the office of the clerk, which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss.

In the Court of Private Land Claims, Santa Fé district, August term. 1894.

JOSE A. GARCIA, PLAINTIFF,
vs.
UNITED STATES, DEFENDANT. } No. 233. Peteca grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary the matters and things in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether or not they are true and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that the plaintiff be put to his proof of all the material allegations therein contained, as provided he shall by the act of Congress, approved March 3, 1891, under which this court assumes jurisdiction of this controvery, and that he be put to his proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

And be it further remembered that the following proceedings were had in the said cause on April 9th, 1894, to wit:

27 ANTONIO SERAFIN PEÑA ET AL., plaintiffs,
vs.
THE UNITED STATES, DEFENDANT. } No. 99. Petaca grant.

L. Z. FARWELL AND M. Z. FARWELL, plaintiffs,
vs.
THE UNITED STATES, DEFENDANT. } No. 153. Petaca grant.

JOSÉ A. GARCIA ET AL., PLAINTIFFS,
vs.
THE UNITED STATES, DEFENDANT. } No. 233. Petaca grant.

It appearing to the court that the subject-matter in the above three causes is substantially the same, and that the causes can be consolidated

and heard together as one cause, it is ordered by the court that the said causes be, and the same are hereby, joined and consolidated, and the same shall be hereafter as one cause, under the title of Antonio Serafin Peña et al., vs. The United States, being No. 99 on the docket of this court, and that the said plaintiffs in causes Nos. 153 and 233 and the persons whom they represent shall be considered and treated as if they had been original petitioners under said cause No. 99.

Be it further remembered that thereafter, to wit, on the 8th day of May, A. D. 1895, a stipulation was filed in the office of the clerk, which said stipulation is in the words and figures following, to wit:

In the United States Court of Private Land Claims, sitting in and for the Territory of New Mexico.

L. Z. & M. Z. Farwell *vs.* The United States. } # 153. Consolidated with # 99 & # 223. Petaca grant.

In the above-entitled cause it is hereby stipulated and agreed upon the part of the United States that the above-named plaintiffs, M. Z. and L. Z. Farwell, have such an interest in the above-entitled cause and in the subject-matter thereof as entitled them to prosecute and maintain the above-entitled action in this court as plaintiffs.

Matt. G. Reynolds,
U. S. Attorney.

And afterwards, to wit, at a stated term of said court begun and held at Santa Fé, New Mexico, on the 14th day of May, 1895, and on the 21st day of said term, the same being June 7th, 1895, the following, among other, proceedings were had, to wit:

28 Antonio Serafin Peña et al. *vs.* United States. } Petaca grant. No. 99.

L. Z. Farwell and M. Z. Farwell *vs.* The United States. } Petaca grant. No. 153.

José Albino Garcia *vs.* United States. } Petaca grant. No. 233.

The above-entitled three causes heretofore joined and consolidated by order of the court and now being brought on for trial together, there appeared C. A. Spies, esq., for and on behalf of petitioners in case No. 99, Antonio Serafin Peña et al. vs. The United States; petitioners in case No. 153, L. Z. Farwell and M. Z. Farwell vs. The United States, being represented by E. L. Bartlett and B. L. Prince, esqs.; Matt. G. Reynolds, esq., U. S. attorney, and Summers Burkhart, esq., assistant U. S. attorney, appearing for and on behalf of the said defendant, The United States. The trial of these causes was proceeded with on the

pleadings presented. Oral and documentary proof was introduced, and the same not being concluded the cause' were continued until Monday. Thereupon the U. S. attorney moved the court for leave to file his owu translation of the grant papers in the cause, which was granted by the court.

And afterwards, to wit, on the 22d day of said term, the same being June 8, 1895, the following, among other, proceedings were had, to wit:

ANTONIO SERAFIN PEÑA ET AL., plaintiffs, *vs.* UNITED STATES, DEFENDANT. } Petaca grant. Consolidates Nos. 99, 153, and 233.

The above-entitled cause coming on to be further heard, there appeared E. L. Bartlett, esq., and L. Bradford Prince, esq., of counsel for petitioners in cause No. 153, L. Z. Farwell, M. Z. Farwell vs. United States; petitioners in case No. 99, Antonio Serafin Peña et al. vs. United States, being represented by C. A. Spies, esq.; Matt. G. Reynolds, esq., U. S. attorney, and Summers Burkhart, esq., assistant U. S. attorney, appearing for and on behalf of the said defendant, The United States. Oral and documentary proof was introduced, and the same being concluded by agreement of counsel the arguments in the cause were postponed until some future day of the court.

And afterwards, to wit, on the 37th day of said term, the same being June 26th, 1895, the following, among other, proceedings were had, to wit:

29 ANTONIO SERAFIN PEÑA ET AL., plaintiffs, *vs.* THE UNITED STATES, DEFENDANT. } Petaca grant. No. 99.

L. Z. FARWELL AND M. Z. FARWELL *vs.* UNITED STATES. } Petaca grant. No. 153.

JOSÉ A. GARCIA *vs.* UNITED STATES. } Petaca grant. No. 233.

The above-entitled causes, heretofore consolidated by order of the court, now coming on to be argued, there appeared E. L. Bartlett, esq., for and on behalf of the petitioners in case No. 153, T. B. Catron, esq., also appearing for petitioners in case No. 153, L. Z. Farwell and M. Z. Farwell vs. United States. C. A. Spies, esq., appeared for the petitioners in case No. 99, Antonio Serafin Peña vs. The United States, Matt. G. Reynolds, esq., U. S. attorney, and Summers Burkhart, esq., assistant U. S. Attorney, appearing for the said defendant, The United States. After full argument by counsel on both sides the case was submitted, and the court, not being sufficiently advised in the premises, took the said cause under advisement. Mr. Spies was allowed to introduce the testimony of Jesus E. Barela and Lucero in this cause; also original deeds.

And afterwards, to wit, at a stated term of said court, begun and held at Santa Fé, New Mexico, on the 7th day of October, 1895, and on the 16th day of said term, the same being October 24th, 1895, the following, among other, proceedings were had, to wit:

ANTONIO SERAFIN PEÑA
vs.
UNITED STATES. } Petaca grant. Consolidated. Nos. 99, 153, and 233.

The above-entitled cause was, upon motion of Geo. Hill Howard, esq., solicitor for plaintiffs, continued until next term, with leave to the parties to introduce further evidence.

And afterwards, to wit, at a stated term of said court, begun and held at Santa Fé, New Mexico, on the 2d day of March, 1896, and on the
15
first day of said term, the same being March 19 2d, 1896, the following, among other, proceedings were had, to wit:

30 ANTONIO SERAFIN PEÑA ET AL.
vs.
UNITED STATES. } No. 99. Petaca grant.

L. Z. FARWELL AND M. Z. FARWELL
vs.
UNITED STATES. } No. 153.

JOSE A. GARCIA
vs.
UNITED STATES. } No. 233. Petaca grant.

The above-entitled causes, heretofore consolidated by order of the court, having been partially presented and argued at a former term of the court and now coming on to be further heard, there appeared Geo. Hill Howard, esq., for and on behalf of the petitioners in case No. 99, Antonio Serafin Peña et al. vs. United States. E. L. Bartlett, esq., appeared for and on behalf of the petitioners in case number 153, L. Z. and M. Z. Farwell vs. United States, and Summers Burkhart, esq., represented the said defendant, The United States. Oral and documentary proof was introduced. The hearing of said cause not being completed, the court adjourned until to-morrow at 10 o'clock a. m.

And afterwards, to wit, on the 17th day of said term, the same being June 20th, 1896, the following, among other, proceedings were had, to wit:

ANTONIO SERAFIN PEÑA ET AL.
vs.
UNITED STATES. } Consolidated. Nos. 99, 153, and 233.

Court resumed the hearing of the above-entitled cause. After hearing the argument of the counsel the same was taken under advisement by the court.

And on the trial of said cause the following testimony, oral and documentary, was offered and introduced:

In the Court of Private Land Claims, district of New Mexico.

Transcript of the proceedings had and evidence offered upon the trial of the above-entitled cause, at Santa Fé, New Mexico, on the seventh day of June and the days following, A. D. 1895, in the above-entitled causes, the same having been consolidated by an order of the court heretofore entered of record.

Counsel: E. L. Bartlett, esq., L. B. Prince, esq., for the claimant's case No. 153; Chas. A. Spiess, esq., attorney for claimants in case No. 233; Matt. G. Reynolds, esq., and Summers Burkhart, esq., for the United States.

Mr. BARTLETT. Governor Prince and myself are here representing the claimants in number 153, and we are ready for trial. Mr. Spiess
31 and Mr. Howard represent several of the parties who it is claimed were put in possession at the time the original grantees were. There is no question between us as to the authenticity and validity of this grant, and the real question is as to the confirmation, to whom it shall be made, as we claim the grant was made to three men alone; that under their petition, which was allowed by the governor, thirty-three others were placed in possession by the alcalde. Mr. Spiess and Mr. Howard represent the thirty-three others.

Mr. REYNOLDS. It is really a question which resolves itself into a legal construction of the title papers.

Mr. SPIESS. The case, as I understand it, is consolidated as case number 99; that is the one case that is set for trial.

Mr. REYNOLDS. They have been consolidated as one case under number 99, but all the cases are for trial.

Mr. SPIESS. I understand it that way.

By the COURT. We would like a further statement of the case.

Mr. BARTLETT. This grant was made in March, 1836, upon the application of José Julian Martinez, Antonio Martinez, and Fraco. Ant. Atencio. The petition was filed in 1836 by them, and the grant was made to them by the governor. There were no conditions attached to this grant, except that they would take possession and occupy it within five years. The matter appears to have been referred for examination and report, and the petition was rejected so far as the sons of Franc. Ant. Atencio were concerned; but the application of the three men was approved, and in that way the grant was made. I believe there is no point made as to the validity of the grant or its occupancy.

(Mr. Bartlett here reads the petition of the claimants in case number 153.)

Mr. BURKHART. It is contended on behalf of the United States that if the governor had any power to make the grant at all, which it denies, still it is an imperfect grant, not having been confirmed by the territorial deputation or proper authority, and that in no event, if it be confirmed at all, can it be confirmed for more than eleven leagues. Next, that it was one of the conditions and terms of the grant that they should settle

it within five years; that this grant was not settled until after the occupation of this country by the United States. Next, it is contended by the United States that it is a community grant, and that the persons placed in possession are entitled only to the allotments which they received and are not entitled to the lands within the outboundaries, the disposition of which was retained by the authorities of Mexico and passed to the United States. Next, it is contended that the boundaries in this case have been changed. Next, it is further contended that there has been a forgery in this case; that an erasure has been made in the title papers, and that alteration has been made in one of the boundaries, which may be plainly seen by any one.

Mr. SPIESS. We claim—having been put in possession and the grant having been made to us as well as the others—we claim
32 equally with the three petitioners who are represented by General Bartlett and Governor Prince.

CHARLES P. EASLEY, called as a witness and sworn, testified on behalf of the petitioners as follows:

Direct examination by Mr. BARTLETT:

Q. What is your name?

A. Charles P. Easley.

Q. What official position do you hold, General?

A. Surveyor-general of New Mexico.

Q. Have you, as such surveyor-general, in your possession the papers pertaining to the Petaca grant, reported number 105, in your office?

A. Yes, sir; I think they are in the possession, perhaps, of the clerk at this time in charge.

Q. Can you get them now?

A. Yes, sir.

Q. What is the paper which you now have in your hand?

A. It purports to be the original Spanish paper in this case, Petaca grant, reported number 105, file No. 179.

Q. That was not an archive, was it?

A. No, sir; I think not. There is no number or letter to indicate that it was an archive.

Q. Is there a translation of that document there?

A. There is a paper here which purports to be a translation.

Q. Was there any testimony taken before the surveyor-general in this case? If so, please state when it was taken.

A. I haven't the docket here. I see among the papers what purports to be the testimony of witnesses. It appears to have been taken February 12th, 1875.

Q. Any others?

A. Another paper, file number 8, purporting to be the testimony taken June 27th, 1877.

Q. Is there still another?

A. Yes, sir; file number 9 purports to be testimony of witnesses taken May 20th, 1878. This testimony purports to—be*ve* taken before Samuel Ellison as United States commissioner.

Q. Never mind. It was filed in your office, was it not?

A. Yes, sir.

Mr. BARTLETT. I will offer in evidence the petition and grant and act of possession, with translations and copies of the same.

(Said document and copy thereof were thereupon marked "Petitioners' Exhibit B."

Translation of said document was thereupon marked "Petitioners' Exhibit C.")

I also offer the testimony of these witnesses, who are dead, which we will show by some witnesses later on.

33 Mr. REYNOLDS. Then you offer them provisionally?

Mr. BARTLETT. Yes; provisionally.

Mr. REYNOLDS. The Government interposes an objection to this document (indicating Exhibit B); that the genuineness of these papers has not been shown; that they are produced from private hands; there is no note or memoranda of their existence or any record thereof, as required by the grant itself as well as by law; that on its face it bears evidence of alterations in material parts, standing unexplained and unaccounted for by the plaintiffs; that it purports to be an original, and it is therefore in the improper custody, which is not accounted for. We object to the translation which has been made of these papers.

By Mr. BARTLETT. Mr. Ellison made the translation which is here, and we do not insist upon its correctness. If there are any errors, we will correct them.

Cross-examination by Mr. REYNOLDS:

Q. This original Spanish papers called the grant is not one of the archives of your office commonly called the Spanish and Mexican archives and received by the first surveyor-general?

A. I think not, sir.

Q. Was it not filed by the claimants themselves when they instituted proceedings in your office under the provisions of the act of Congress of July 22, 1854, and went with the files of that case?

A. I cannot answer that question without examining the docket of the case.

Mr. BARTLETT. We admit that.

Mr. REYNOLDS. All right.

Redirect examination by Mr. BARTLETT:

Q. Have you in your office any record of the Spanish and Mexican authorities of the issuance of grants, or any kind of a record of grants that were issued?

A. There were kept a list of several (interrupted)—

Mr. REYNOLDS. We are willing to admit that the archives do not contain all the records and archives of the former governments, and that from time to time they have been taken out and lost and destroyed; but before they can avail themselves of such secondary evidence they must first show that this grant was recorded in order to lay the foundation for the purpose of showing that the records have been lost and destroyed.

Mr. BARTLETT. We think the presumptions are sufficient; but that's all.

Mr. REYNOLDS. That's all.

Witness excused.

34 Mr. BARTLETT. I will offer in evidence the plat of the grant.

That is the original plat of the original survey (indicating or ref'rring to another plat) and this is a copy of it.

(Said plat was thereupon marked "Petitioners' Exhibit A.")

Mr. REYNOLDS. We object to the plat as not conforming to the boundaries even as set out by the plaintiffs themselves and contained in the act of possession. We do not object to it, so far as the plaintiffs' right to claim or to make their claim according to this map, but we say this map is not correct according to the title papers.

Mr. BARTLETT. I desire, with the consent of the Government's counsel, that a correction of the translation may be made in accordance with the fact, which is, in the original translation of the grant documents there is the following: "These settlers who took possession of the Petaca grant of land, as set forth in the grant on the other side of this." The true translation is, "Those in the settlement who took possession in the lands of the Petaca."

Mr. REYNOLDS. That is correct of that part of it, but there are several others. The Government takes leave to file its own translation. Yes, and, as Mr Burkhart suggests, that the copy they have filed of the original Spanish is not a correct copy of it.

Mr. BARTLETT. If it is not correct, I will make it correct. I will now offer the original deeds, the deeds made to Mr. Farwell from the original grantees of the grant. They are numbered from one to nineteen (19), inclusive. First is a deed from Eugenia Juana Montaya. I desire to offer these deeds in addition to the stipulation which is on file.

By the COURT. If there is no objection and if you have an abstract of the deeds, you may offer the abstract instead of each deed separately.

Mr. BARTLETT. Very well, if the court please. I will now offer the abstract, which is marked by the clerk file number 7. The originals of these deeds are here. If there is no objection, I ask leave to withdraw them and file copies.

There was no objection.

I will now read the stipulation of the United States attorney.

WILLIAM M. TIPTON, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. BARTLETT:

Q. I will ask you to examine this paper [original Exhibit B shown witness] from the surveyor-general's office and state whether or not you are familiar with the signatures purporting to be there and if they are genuine signatures. In the first place, if you are acquainted with the signature of the governor what is your opinion in regard to that?

A. The only signature appearing on this document with which I am sufficiently familiar to justify me in expressing an opinion as
35 to its genuineness is that of Perez, the governor, and that signature, in my opinion, is genuine. As to the other signatures on the document I can't say that I know them.

Cross-examination by Mr. BURKHART:

Q. Mr. Tipton, what experience have you had in the examination and deciphering of old Spanish documents?

A. I have had a good deal of experience; shall I state it in detail?

Q. I would like to have it in detail.

A. I was connected with the surveyor-general's office of this Territory for the greater portion of sixteen years; during that time I was for eight (8) years the translator of the office, and had under my immediate charge the Spanish archives. I was during that time almost constantly engaged in deciphering, copying, and translating those papers. After I left that office, in the spring of 1892, I was employed in the position, which I now occupy, as special agent of the Court of Private Land Claims, being attached to the office of the United States attorney for that court, and since the time of my employment I have been also engaged in work similar to that in which I was engaged in the surveyor-general's office. In addition to the examination of such Spanish and Mexican documents as are filed in this court in the matter of claims against the United States, I have also made examinations for the Government of papers in the archives of the State of Texas, city of Austin; also the archives of the office of the treasurer-general of the State of Sonora, Republic of Mexico; also the archives of the ayuntamiento of the Cuidad de Juarez and the archives of the political chief, in the same town; also the archives of the secretary of state of the State of Chihuahua and the archives of the registro publico and the ayuntamiento of the city of Guadalajara, State of Jalisco, Republic of Mexico.

Q. Mr. Tipton, have you made an examination of this document which purports to be the act of possession in this case?

A. I have.

Q. Will you state whether or not any changes have been made in that document? State the result of your examination as to any changes which may have been made in what purports to be the description of the eastern boundary as set forth in this act of possession.

A. I notice in that portion of the act of possession which has been translated in the translation on file in the surveyor-general's office in these words, "On the east the creek of the Aguaje of the Petaca," that in the original after the word "oriente," meaning "east," that the Spanish word "la," meaning "the," occurs. This word is immediately followed by another, in which changes are plainly visible and which has been copied in the surveyor-general's office and in the petitions filed in this case as the word "arroyo." An examination of these two words under the glass shows that the double "r" immediately following the
36 word "la" was formed from the two first downstrokes of the letter "m;" that the third downstroke of the "m," by an addition to its top, carried upward and to the right, almost touching what was formerly an "e," has been changed into a character resembling the small "a's" as they appear in the other portions of the document. Foll'wing this character "a" there was a letter "s," as the word was originally written, and to which a long stroke forming the staff of an "l" has been added, and following this "s" was an "a," and to the first downstroke of which another "l" has been added, and to the final stroke of which a curve rising upward and to the right, thence tur'ing by a hook back to the left in such manner as to resemble and imperfectly formed "o." These strokes, with these different changes as I have described them, may be easily seen under a strong glass, as may be also seen the addition of an "s" to the word "la" immediately preceding

the word "Aguajes." The word "Aguajes" itself has been written over some other word, which has been so perfectly erased as to make it impossible to now decipher it, although portions of its strokes may still be seen. Following this word "Aguajes" and attached to the word "Petaca" occurs what appears to be a greater resemblance to a small "a" than anything else, although it is not perfectly formed. It can be seen from a careful examination of this change that the object that was mentioned as the eastern boundary of this grant before the change was made was described as "la mesa"—that is, "the table land of the"—and then followed the word which is now undecipherable and over which is written the word "Aguajes," the word "the" immediately preceding the word "Aguajes" having been originally in the Spanish, the word "la," and which is singular, and to which an "s" was added to make it plural in order that it might agree with "Aguajes," but even in this there is a failure, for the reason that the word "Aguajes" is masculine and the article preceding it should have been "los" instead of "las." There is nothing following the word "Aguajes" to justify the translation of the "Aguajes of the Petaca."

Q. In your opinion, Mr. Tipton, when were those changes made? Were they made at the same time that document purports to have been executed or were they made at some other time?

A. An examination under the glass shows that they were not written in the same ink as the remainder of the document. The ink in which this act of possession was written was an ink which contained a sediment, and that appears in all downstrokes, in very many particles, which are only plainly seen by the use of the glass, and the words which I have stated were added are entirely lacking in this characteristic, which words appear to be in an ink similar to many of the writing fluids, and if it contains a sediment it cannot be detected with an ordinary lens.

Q. In your opinion were those changes made by the same person who wrote the body of the document or not?

A. No; I don't think they were made by the same person. The character of the letters is escentially different; the changes, for instance,
37 in the staff of the two "l's." They are produced in an entirely different manner from that in which the "l's" were produced by the person who wrote the remainder of the document.

Q. What is the translation of these Spanish words as they now appear there—what would be the correct meaning in English?

A. Strictly considered, it would not be poossible to translate this word which has been changed from the word "mesa." As it appears now it would be "rrallo," and I am not acquainted with any such word as that in the Spanish language. It has been taken and translated as having been intended for the word "arroyo" by using the "a" of the preceding word "la" as a portion of "arroyo," but in considering the word "mesa" the "la" was a seperate word and not intended to be any portion of the word which is translated as "arroyo."

Q. What article would be used for the word "arroyo"?

A. The masculine article "el" would be correctly used.

Q. And what article would be used before "mesa"?

A. The article "la," which has been used in this document.

Q. What would be a correct translation of the remainder of that "de las Aguajes á Petaca"?

A. Well, forgetting that the word "las" immediately before "Aguajes" is incorrect in Spanish, although it would not be when translated into English, it would be, "of the Aguajes to Petaca."

Q. If it was intended to be "of the Aguajes of the Petaca," what Spanish words would be used for that purpose?

A. "de los Aguajes de la Petaca."

Q. What is the proper translation of the word "Aguajes"?

A. I would call it "water holes."

Q. How would it be spelled?

A. It is spelled in two ways. The better authority seems to be "A-g-u-a-j-e," although some spell it with two "g's."

Q. How is it spelled there?

A. "A-g-u-a-j-e-s." It is in the plural form here.

Q. In what portion of that document, of this grant paper, was the change which you have mentioned in t'e petition, grant, or act of possession?

A. It occurs on the first page of the act of possession, in the nineteenth line from the top.

Q. How is the description in the petition, Mr. Tipton, for this grant?

A. I don't recollect it, General. I read it over some days ago.

(Taking original grant document Exhibit B and examining it.)

Q. It was "the tract of the Petaca," I think.

A. The tract is referred to as "La Petaca" in the petition, but no boundaries are recited.

Q. This is the only place, then, in that document where this place called Petaca is described by boundaries?

A. I believe it is, sir.

38 Redirect examination by Mr. BURKHART:

Q. I want to ask you one question which I overlooked, and that is, what is your knowledge of the Spanish language? What experience have you had in translating?

A. I have such knowledge as I have been able to acquire during the last nineteen years.

Mr. BARTLETT. We admit that Mr. Tipton is an expert for the purposes of this case.

FRANK A. CHAVES, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. BARTLETT:

Q. Do you speak English, Mr. Chaves?

A. I don't know.

Q. Do you speak it enough to testify without the aid of an interpreter?

A. I think so.

Q. State your name, age, and where you live.

A. Frank A. Chaves; I am 46 years old; I live in Conejos County, Colorado.

Q. Where is that county with reference to the Territory of New Mexico, the boundary?

A. On the north line of New Mexico.

Q. Are you acquainted with the Petaca tract of land known as the Petaca grant in New Mexico?

A. Yes, sir.

Q. How long have you known it?

A. I have known it since I have been a young boy.

Q. Do you know the boundaries of that tract?

A. Yes, sir.

Q. How do you know them and what are they?

A. I see some of the corners there and the south place is in the canoncito, further going out La Petaca to Cevilleta, the line going west some distance. I don't know how far it is.

Q. Well, what is the west boundary?

A. The west is where La Petaca divides with La Vallecito; thence from the same canoncito it runs east to the Arroyo de los Aguajes.

Q. I will just ask you about the north boundary, Mr. Chaves.

A. Thence—a, it runs north, following the Arroyo de los Aguajes to the head—to the Loma de Tio Ortiz—the way I know it—between the north and west to where are divided the waters of the Rio Petaca and of the Vallecito, and thence south to where I stated the division to the Vallecito grant to be.

Q. How far is the Ortiz hill from the Petaca stream?

A. It is about three miles, more or less.

Q. Which way?

39 A. From the head of the Arroyo de los Aguajes to the Rio Petaca.

Q. In what direction is the Ortiz hill from the Rio de la Petaca?

A. East.

Q. And about three miles?

A. Yes, sir.

Q. Three miles east of the head of the Petaca?

A. Yes, sir; to the Rio de la Petaca.

Q. Now locate the Ortiz hill with reference to this Arroyo de los Aguajes.

A. The Lome de Tio Ortiz is on the head of the Arroyo de los Aguajes.

Q. In which direction is it from the south boundary which you have given?

A. I don't understand the question.

Q. You said that the southeast corner (interrupted)——

A. I said that the Arroyo de los Aguajes (interrupted)——

Q. Wait a moment. In which direction is the Tio Ortiz hill from the Arroyo de los Aguajes?

A. It turns a little around. It is more or less right there south of east, because the Arroyo de los Aguajes—later on it is directly to the north, to the place which we call Aguajes, and then the arroyo turns between north and west to the head.

Q. Now, do I understand you that the Ortiz hill is almost north of the Aguajes?

A. Yes, sir.

Q. How far is that from the San Antonio Mountain?

A. I consider about four miles, more or less.

Q. In what direction is it?

A. From the San Antonio Mountain in the east direction; little over to the north.

Q. I want to know the direction of the Tio Ortiz hill from the San Antonio Mountain.

A. The San Antonio Mountain—east and north.

Q. East and north of the Ortiz hill?

A. Ortiz hill; yes, sir.

Q. That would make the Ortiz hill, then, west and south of the San Antonio Mountain. Is there any other hill or mountain in that vicinity known by the name of Tio Ortiz?

A. Not that I know of until a few years ago.

Q. What did you hear then?

A. A sawmill was started on near Tres Piedras. I saw someone call the Lome Tio Ortiz at a west direction from Tres Piedras.

Q. About how long ago was that mill started?

A. I don't remember; not a great time, but I would say '81, '82, or '83. I don't remember very well.

Q. Who started this mill, do you know, a little west of Tres Piedras?

A. I don't recollect. The man who I heard to speak that was—but, as I now remember, I have my sheeps ranch at the head of the Rio de la Petaca, at the places called Las Tuces, at the head of the river. One day a man, Juan Pasqual Martinez, from La Petaca, was on my ranch. Then he began talking about La Petaca grant, and he told me if I known it where La Loma de Tio Ortiz is. I told him, "Yes." He says, "Where they are?" I answered, "On this direction," to the east, and there set this Petaca (Ortiz) hill, and then he says, "How you know that?" I told him how. I told him why. Then he says, "Because I hear Lome de Tio Ortiz is some place down below there of Tres Piedras." I told him, "I don't know, but my grandfather, some time he been down here with some man, Felipe Martin, deceased, was settled over El Rito and camped on the Aguajes, and then I heard conversation between my grandfather and Mr. Felipe Martin, and then they say Juan Ortiz got a ranch on that place where they called the Loma de Tio Ortiz." Mr. Martin says, "Ortiz is hard-working man, and he been risking his life in this solitar (solitary) place, and once," he says, "I came down from El Rito to trade with the Indians and to kill some buffalos, and found him on his ranch pretty near dead by the occasion he run away from the Indians from his ranch of the La Aguaje, would not and killed one of his boys there at his ranch." My grandfather said, "I would not risk my life on such a solitar (solitary) place for million dollars." That is the conversation I heard between that man and my grandfather, and for that reason I told him the Loma de Tio Ortiz was there.

Q. How long have you known this same place which you have designated? How long have you known it by the name Tio Ortiz hill?

A. Since I been a boy and started to live at Conejo. When I used to go to see my grandfather we would camp—sleep on the La Aguaje, and they tried to show me the places where he traveled during the time he was out in camp.

Cross-examination by Mr. BURKHART:

Q. You spoke of having been to the corners of the grant. You mean the corners as laid down by the surveyors, don't you?

A. Yes, sir.

Q. You were not with the surveyors when they made the survey?

A. No, sir.

Q. Tio Ortiz, from this conversation you heard between your grandfather and this man Martin, lived at different places through that community; he lived around from place to place?

A. No, sir.

Q. He didn't?

A. No, sir.

Q. Didn't you say he run away, when to one place and another, and that he was run away by the Indians?

A. No, sir.

Q. Don't you know, as a matter of *that*, that the hill that you have been calling the Loma de Tio Ortiz has always been known in that community, until within the last fifteen years, as the Cerrito de la Cruz?

41 A. The Cerrito de la Cruz is an independent hill. I know that, too.

Q. Hav'n't you frequently stated within the last five years at Tres Piedras, and other places in Rio Arriba County, in the presence of S. L. Bacheleor, that you knew the Tio Ortiz hill, which was the boundary of this grant, and that you knew it was near Buckman's mill, and that the line of this grant would not take in Tres Piedras, but would leave Tres Piedras outside of the grant, and that you knew the settlements of this grant was not made until after the United States took possession of this country, and that the grant was not a good grant? Hav*ing* you frequently stated that in conversation with Mr. Bacheleor and numerous other people in and around Tres Piedras, in Rio Arriba County?

A. No, sir; I know the conversation I done have with Mr. Bacheleor.

Q. When and where?

A. I have talked to Mr. Bacheleor several times in regards to this La Petaca grant business.

Q. When and where?

A. I don't remember (int*u*rrupted)——

Q. Give the date.

A. I don't remember exactly the time; between—it is five or six years from that time up to now.

Q. Where?

A. In Tres Piedras.

Q. At his store?

A. In the store, and in many other places outside of the store. He tried to find out with me relative to this Loma de Tio Ortiz, and I told him of what I had heard it spoken of; then he told me once that he buys up a place in the grant, and to see if I could get interests in the place. I says to Mr. Bacheleor if he wants interest in the place I will try and sell him interests that I represent. Well, he told me that he wanted to buy one of those interests that I represent. He offered me a

certain amount of money for those interests, and then he offered me some more money to help him produce evidence on to find testimony to show that the Loma de Tio Ortiz is at the place of Mr. Buckman's mill. I told him, "It is pretty hard for me to do that," because he want certain men, honest and solid men, to show that this Loma de Tio Ortiz, and I could not do that. There were many conversations between Mr. Bacheleor and me in regard to the Ortiz hill of that kind.

Q. Didn't you state to him that this grant was not settled until after the occupation of this country by the United States?

A. I don't think so.

Q. You are certain that you didn't?

A. No, sir.

Q. You are certain that you did not tell him?

A. I am certain that I did not tell him.

Q. You are sure also that you never told him that there was a hill known as the Tio Ortiz hill west of Tres Piedras?

42 A. I am sure I never say that was the Tio Ortiz hill; yes, sir.

Q. Who was this man that you had this conversation with?

A. Juan Pasqual Martinez.

Q. He told you that the hill known as the Ortiz hill (interrupted)——

A. He stated that he had heard (interrupted)——

Q. (Continuing:)—was over near Buckman's mill?

Q. When was that conversation?

A. That is—I don't remember whether it was about '83 or '84, I should have said, or '85; I don't know; in '83, or it might have been in '85.

Q. Where did he say this hill was with reference to Buckman's mill?

A. He told me at Buckman's mill, a little below that.

Q. You claim an interest in this grant, don't you?

A. Yes, sir.

Q. Where have you lived all your life?

A. I have lived in Conejos County since '55, in November.

Q. All the time?

A. Yes, sir.

Q. How old were you when you left New Mexico?

A. Five years old.

Q. Where did you live when you were in New Mexico?

A. La Petaca.

Q. And you were five years old when you left?

A. Yes, sir.

Redirect examination:

Q. Where did Juan Pasqual Martinez, with whom you had this conversation, live?

A. La Petaca.

Q. You state that you claim an interest in this grant. How do you claim that interest?

A. I claim an interest from my father.

Q. As an heir?

A. Yes, sir.

Q. How did he claim his interest?

A. He was one of the original settlers of Petaca.

Q. Did you say Mr. Bacheleor wanted you to hunt some testimony, to find some evidence about this hill?

A. Yes sir; he told me.

Q. For what purpose did he state?

A. He told me to look for witnesses to prove that La Loma de Tio Ortiz are near Mr. Buckman's mill.

Q. That would reduce the size of the grant, wouldn't it?

A. Yes, sir.

Q. How far is it from this Tio Ortiz hill near the San Antonio mountain to the hill that you spoke about near Buckman's mill?

43 A. It is about sixteen to fourteen miles.

Q. Were you born on the Petaca grant?

A. Yes, sir.

Q. Do you know how long your father had been there?

A. Five years I was born.

Q. How long had your father lived there before you were born?

A. I did not understand you. He had lived there since '36.

Q. Is your father alive?

A. No, sir; he died; it was in '64.

Q. What was your father's name?

A. Manuel Chaves.

Examination by Mr. SPIESS for certain claimants:

Q. You stated that your father's name was Manuel Chaves. Did you ever have any conversation with your father as to the persons who were put in possession of the Petaca grant?

A. Not with my father; with my grandfather.

Q. You state that you had a conversation with your grandfather as to who was put in possession of this grant. What was the name of your grandfather?

A. Miguel Elias.

Q. Was your grandfather one of the persons who was put in possession?

A. No; my father. My father had the property at the time he moved to Conejos, and my grandfather took possession of the land which my father had. He lived there until he died, and now his family is in possession of the land.

Q. In this conversation with your grandfather, did he state who was put iu possession of this Petaca grant?

A. It was this way: When my father moved away from that place he delivered the possession, donated it, to my grandfather—his land—and then my father, he never told me anything till when he was sick in October, 1864, he speaking to my mother in regard to the land he owned in the Petaca, and as my mother tell me about it, and my mother tell me her father are in possession of the land, and that the request of my father is that my grandfather live on the place till he wants to, and him been living on the place until him die—in La Petaca.

Q. State if you remember whom your grandfather had stated had been placed in possession of that grant and the persons, if you remember.

A. I don't understand the question.

Q. State if you remember whom your grandfather stated had been placed in possession of the grant.

A. My grandfalher told me in this way: Some time in 1836 he was

living in Ojo Caliente and there was a calling made by the people living down there on the place at Ojo Caliente, and then there was talking and spoke in reference to the Rio de la Petaca—says that Rio been granted on the y'ar 1824; that the people who are claiming to that place
44 never been living there; and then the people *supposed* (proposed) to appoint a commission to apply for the place; that the people there did appoint a commission of three gentlemeu, one (or Juan) Julian Martinez, in company to some more, Francisco Antonio Atencio, and then the father of the first.

Q. Just state who was put in possession.

Mr. REYNOLDS. No, sir. I insist, he having asked for the conversation, that it shall all go in the record.

Mr. SPIESS. By what he is saying is incompetent, being mere hearsay.

Mr. REYNOLDS. That's just it; it is all hearsay, for that matter, but he is attempting to show and prove a fact here by such testimony, and we insist, if any of the conversation goes in, that we shall have the whole of it.

Mr. SPIESS. All I ask, if your honors please, is that this witness shall answer the questions which I ask him. If the United States desir's to bring out anything, they have the privilege of cross-examining him.

By the COURT. You have asked him for a part of the conversation; we will allow him to proceed.

(Witness, continuing:) Julian Martinez—that was the commission—that was the commission that were appointed to apply for the place; they went and had the grant made what was put in possession of about twenty-seven more others besides these three men. I don't remember the names of these all, but I can remember some of the names.

Q. Give some of them, if you remember.

A. Miguel Trujillo, Francisco Valdez, Amador Sanchez; there were two Juan Antonio Luceros, Jose Francisco Lucero, Gabriel Vigil, and there are two Antonio Martinez, if I remember well; Julian Martinez, Francisco Antonio Atencio, Jose Francisco Ruibal, Manuel Chaves, some more, Benito Martinez, I guess, and many others I don't remember.

Q. Now, Mr. Chaves, these people were there and put in possession with the three of the commission and have claimed the property same as they have, hav'n't they?

A. I have not seen these three take possession of this tract of land, but I think so.

Cross-examination by Mr. BURKHART:

Q. Were you one of the claimants who presented this grant to the surveyor-general for confirmation in 1875?

A. I don't understand very well that question. I will tell you who I represent in this case. I was appointed agent for Teodor Maez, who is a man who bought large interests in that place of Petaca. I was appointed his agent to attend to his business, and I started to look after a part of this grant, together with Mr. Teodor Maez, and then I was
45 appointed one of a committee of five of La Petaca, of the people of La Petaca, to make arrangements with any attor*y*neys of this place to attend to the business for it.

Mr. SPIESS. He is speaking of the present suit. He does not understand the question.

Q. In 1875?
A. I don't know anything of the kind; no, sir.
Q. Where is the land which you say your grandfather gave you?
In the town of Petaca, between those towns.
Q. Is it on the river?
A. It is on the river there; there are many towns.
Q. Didn't your grandfather tell you the Indians were bad in that neighborhood?
A. Yes, sir.
Q. Bad?
A. Yes, sir; it was killed one of his sons there.
Q. Who was this man that told you that the Ortiz hill was near Las Tuces?
A. My grandfather told me.
Q. I am speaking now of the other conversation which you with a man on your ranch about 1885.
A. Juan Pasqual Martinez.
Q. He lived at Petaca?
A. Si (yes); he lived there.
Q. Did he have a father there?
A. Yes, sir.
Q. Where did—what was his father's name?
A. Ramon Martinez.
Q. Was he one of the persons who was originally put in possession of the grant?
A. No, sir.
Q. Do you know how long he had lived at Petaca?
A. Juan Pasqual Martinez?
Q. Yes.
I remember he lived there in 1869; the first time I saw him in La Petaca with his family. He bought interests there from Rafael Chaves.
Q. Didn't Juan Pasqual Martinez live there when you left?
A. No, sir.
Q. Where did Ramon live?
A. He came from Los Angeles to Petaca. When I went to visit my grandfather I see these men down there.
Q. How old were you when you left?
A. Five years old.
Q. And when you went back to see your grandfather you saw those gentlemen there?
A. Yes, sir; and he told me that he had bought the land from Rafael Chaves.
Q. Was Rafael Chaves one of the original grantees?
A. No, sir; he bought the land from a wife of Juan Martinez.
Q. Original grantee?
A. Yes, sir.

46 By Mr. REYNOLDS:
Q. How many people are living on that grant now?
A. I don't know.
Q. About how many?
A. You mean of the Rio or in the Plaza?

Q. I mean the whole grant.

By Mr. BURKHART:

Outside of the town of Tres Piedras?

A. Included Las Tucas; more or less, one hundred.

Q. Where do they all live except those living at Tres Piedras?

A. On the River Petaca.

By Mr. BARTLETT:

Did you say families or people?

A. It would be, more or less, one hundred heads of families, men without families included. With the families there would be number more.

By Mr. BURKHART:

Q. Are they all claiming under this grant?

A. I don't know.

By Mr. REYNOLDS:

Q. You don't know?

A. I don't think so; I don't know. I was appointed commissioner for certain men there; they have been coming on the grant there for some years. There are others there with Mr. Berry for cutting ties on the place, and there are also others holding places for ranch—ranch of sheep—called ranch's.

Q. You are one of the commissioners appointed by the pretended owners to prosecute this suit, ar'n't you?

A. Yes, sir.

Q. And you don't know exactly how many people are on that grant and claiming under that grant?

A. Yes, sir; thirty-six.

Q. Where do they live?

A. They live on the Rio Petaca.

By Mr. BARTLETT:

Q. He don't understand the question. Do I understand you to say that there are thirty-six people living on that grant, claiming it?

A. Yes, sir; thirty-six.

Witness excused.

At this point the court took a recess until 2 o'clock.

At 2 o'clock p. m. court met pursuant to adjournment.

All present as during the morning session, and the trial of this cause was proceeded with.

47 SERAFIN PENA, a witness called and sworn, testified on behalf of the petition', through the medium of the official interpreter, as follows:

Direct examination by Mr. BARTLETT:

Q. State your name, age, and where you live.

A. Serafin Pena; I do not know how old I am; at the y'ar '53 or '54 I had already arrived at the age of reason, but I do not remember.

Q. Where do you live?

A. I live at Petaca.

Q. How long have you lived where you now do?
A. About twenty years; sometimes I have gone out of the place.
Q. Did you testify here in Santa Fé in the matter of the Petaca grant before the surveyor-general in the year 1875?
A. I did.
Q. How old were you at that time?
A. I am not certain.
Q. Were you a voter at that time?
A. Yes, sir.
Q. Do you remember the time of the American war?
A. Yes, sir.
Q. Were you a voter then?
A. Yes, sir.
Q. Where did you live then?
A. In Taos. I was in Taos at the time of the war.
Q. Do you know a place in this Territory called La Petaca?
A. Yes, sir.
Q. Where is it? And give its boundaries, if you know.
A. It is at the place that they call La Padilla, opposite the mesa below, at the place Petaca.
Q. Please give the south boundary of this grant, if you know it.
A. It is the canoncito, small cañon, of the bottom of the lands of the Cevilletta, commonly called the lands of the man by the name of Jose Miguel.
Q. What other name?
A. I don't remember; that is the only way that he is called.
Q. Was it Jose Miguel Lucero?
A. I think so; I am not certain.
Q. What is the north boundary of this tract?
A. The Tio Ortiz hill or loma.
Q. How far is that and in what direction from the San Antonia Mountain?
A. The San Antonia Mountain is towards the sunrise.
Q. From the loma de Tio Ortiz?
A. Yes, sir.
Q. How far is it?
A. I am not certain about the miles, but I think it is two or three miles, more or less.
48 Q. What is the east boundary of this grant, if you know?
A. The ridge of the Vallecito, commonly called (interrupted)——
By Mr. BARTLETT. I asked him about the east boundary.
By the INTERPRETER. That is what he said.
Q. What is the east boundary of this grant?
A. The arroyo de los Aguages.
Q. And the west boundary?
A. The ridge of the Rio del Vallecito, as they call it.
Q. You have spoken of the Ortiz hill; do you know of any other hill on that grant by that name?
A. No, sir.
Q. Do you know why this hill was so called?

A. No, sir; I do not know. It was commonly said because there was a ranch there. I did not see it.

Q. Do you know who lived there on this ranch?

A. I do not.

Q. How do you know these boundaries?

A. From the persons who had taken that property of the Petaca.

Q. When did they take possession of the Petaca, if you know?

A. In the year '36.

Q. Who were these persons, if you know?

A. A party by the name of Concepcion Lucero.

Q. Anyone else?

A. Bruno Lucero.

Q. Anyone else?

A. Jose Antonio Pio Lucero and Jose Antonio Martinez.

Q. Was Julian Martinez there?

A. Yes, sir; Julian Martinez—there. There were two Martinezes.

Q. State, if you know, how they happened to go there.

A. This man, Julian Martinez, made a petition to the Government—that is what they said.

Q. Petition for what?

A. It was that they would grant them the land.

Q. Where were you living at that time?

A. At Cebolleta.

Q. Do you know—Cebolleta is just south of this tract, is it not?

A. Yes, sir.

Q. Do you know how long these people occupied their land?

A. I do; yes, sir.

Q. For what time?

A. They occupied it all the time. Sometimes, about October, they would abandon it on account of the Indians taking away from them their crops, and then they would go away.

Q. What Indians were these?

A. The Utes, Apaches, and Navajoes. All these Indians were hostile then.

Q. How many families cultivated these lands from the time you speak of in 1836 to the present time, if you know?

A. There were twelve or thirteen families there.

49 Q. Just state what they did in the way of improving them—building shanties, houses, and so forth.

A. Yes, sir; and by cutting up their lands and making their ditches, so far as they were allowed to do so by the Indians.

Q. Did they have any houses on this grant?

A. I am not certain about the houses. They made some shanteys there to live in—wooden shanteys to live in.

Q. Did you not live on this grant at any time?

A. Yes, sir; I lived some time there.

Q. Did you have any interest in it?

A. Yes, sir; I had interests.

Q. What kind of interests do you mean?

A. I had land in it.

Q. How did you get that land?

A. I bought it from one of the persons who settled on the land.

Q. In your testimony before the surveyor-general in 1875 you stated that you had no interest in this land. Will you explain to the court how you happened to make that statement?

A. Yes, sir. At the time the question was put to me whether I had interests there, and as the Indians had destroyed all my interests, I said I had none. If he had put the question as you did and asked me if I had lands there I would have said yes.

Q. State what you understand by interests.

A. I understand such property as sheep, cows, and so forth.

Q. At the same time you testified that you were not acquainted with the boundaries of this grant. Explain why you so testified at that time and whether or not you did know as a matter of fact.

A. Probably I did not understand the man. I am not certain whether I said or not I did not know the boundaries then, and if he asked me then it was my fault if I answered in that way, and if he did not ask me it was his fault.

Q. You did know the boundaries?

A. Yes, sir.

Q. Did you know Jose Ysidro Barela?

A. I know him.

Q. Was he a witness at the time you were before the surveyor-general?

A. Yes, sir.

Q. Is he living or is he dead?

A. He is dead.

Q. When did he die?

A. Five or six or eight years, I am not certain.

Q. Did you know Jesus Maria Barela?

A. Yes, sir; he was his father.

Q. Jesus was the father of Ysidro?

A. Yes, sir.

Q. Jesus was the father of Jose Ysidro Barela?

A. Jesus Maria Barela was the father.

Q. Is he living or dead?

A. He is dead also.

50 Q. Can you state when he died?

A. Jusc preceding his son a short while, about a year or two.

Q. Did you know Juan Ysidro Lucero?

A. I did.

Q. Is he living or dead?

A. He is dead.

Q. When did he die?

A. I do not know. I have not seen him since—I have not seen him since then, and therefore he must be dead.

Q. Do you know as a matter of fact whether he is dead or not?

A. I do not know.

Q. Where did he live?

A. They said that he lived in La Joya, in the county of Rio Arriba.

Q. Did you know Francisco A. Maese?

A. I did.

Q. Is he living or dead?
A. He is dead.
Q. When did he die?
A. I do not know, but I am so informed that he is dead.
Q. Did you know Jose Maria Miera?
A. I knew a man by the name of Miera.
Q. Do you know whether he is alive or dead?
A. This Miera that I know is alive, but I do not know if he is the same one that you ask me.
Q. How long did you live on the Petaca grant? When did you go there?
A. I went there in the year '30 for the first time, and I lived there until I was married, in the year '50.
Q. How did you get your interests in this tract? From whom did you purchase?
A. I purchased it from a man by the name of Francisco Valdez.
Q. State how you occupied and used that land?
A. I used it for farming.
Q. State how. By ditches and so forth?
A. Yes, sir.
Q. Did you raise crops and use the property?
A. Yes, sir. When I got married I brought my family over there and raised ditches, and I raised crops in it.
Q. When was that?
A. I say it was from the year '50, when I went there with my family, but prior to that I already owned the land there.
Q. Did you live there before you went there with your family?
A. Yes, sir.
Q. When did you first go on this land to occupy it and raise crops?
A. It must have been in the year 1838 or '36; I not certain about the year.
Q. State, if you know, how many families were on this tract of land at the time of the American war.
51 A. There was a man by the name and family Francisco Antonio Atencio, and the family of Francisco Valdez.
Q. You needn't give the names; more or less, how many were there?
A. That would be hard.
Q. More or less?
A. There were about twenty-eight or twenty-nine families; there were more, but I did not know them all.
Q. Now, if you can, please state about how many families occupied the land in the way you have mentioned from the time 1836 down to the American war.
A. I am not certain how many families there were, but there were many families; about twenty or twenty-nine. There were many families; these people were working there.

Cross-examination by Mr. BURKHART:

Q. Mr. Pena, where did you live in 1810?
A. At Cebolleta.
Q. Where did you live in 1805?
A. At Cebolleta.

Q. You testified that you knew Jesus Maria Barela, who testified before the surveyor-general; where did he live?

A. When he went to take that land he lived at Ojo Caliente.

Q. Where did he live in 1875?

A. At Cebolleta.

Q. Where did Juan Ysidro Lucero live, whom you testified was dead?

A. There were two Juan Ysidro Luceros; there were two persons by that name, one living at Cebolleta and the other at Rio Arriba.

Q. The one living at Cebolleta, is he living or dead?

A. He is dead.

Q. Where did Francisco A. Maese live?

A. At Cebolleta.

Q. You were one of the persons in whose interest the claim was presented to the surveyor-general in 1875?

A. No, sir.

Q. You live at La Petaca now, don't you, Mr. Pena?

A. Yes, sir.

Q. You know the country in that neighborhood well, don't you?

A. I do.

Q. Right to the east of the Rio Petaca—the Petaca River—isn't there a mesa, a very high mesa?

A. Yes, sir.

Q. What is the name of that mesa?

A. The Mesa de Titillo.

Q. How long is that mesa?

A. I do not know how long it is.

Q. Is it as much as fifteen miles from north to south?

52 A. I do not know. I do not understand very well about miles.

Q. Well, how many leagues is it?

A. I do not know; I can not state.

Q. Does it go as far south as Canoncito?

A. It passes that way.

Q. And as far north as the Las Tusas?

A. Yes, sir.

Q. Do you know a cañon between the Petaca River and the Arroyo de los Aguages; have you been across that country?

A. Yes, sir.

Q. Is not this Mesa de Tetillo the only mesa between the river Petaca and the Arroyo de los Aguages?

A. Yes, sir.

Q. It is a very high mesa, isn't it?

A. Yes, sir; parts of it are very high, and other parts are very low.

Q. Mr. Pena, you say you were married in 1850?

A. I said in 1850.

Q. How old were you when you were married?

A. I am not certain.

Q. Were you an old man or a young man?

A. I was a young man.

Q. How old were you when you went on the grant in '36 or '38?

A. I do not know. I only know that I was married in the year '50, because my father and mother told me so.

Q. How long before was it that you went on the grant?

A. It was before '50; I do not remember; it was a long time before that time.

Q. Were you a young man at the time?

A. I was already a man.

Q. How old a man?

A. I am not certain about that. My misfortune was that I never knew how to read.

Q. Did you ever live in Taos, Mr. Pena?

A. Yes, sir; I lived there. When the Americans came here to Santa Fe, I was living in Taos. I can not state the year. I was living there with my grandmother when they took me then to fight.

Q. Were you a young man or an old man?

A. When I was there they came and took me away to fight against the Americans at Santa Cruz. I was already a man.

Q. How long had you lived in Taos?

A. I was there a short time; I went to pay her a visit.

Q. Didn't you say just now they came and took you away to fight—took you away from your grandmother's?

A. I have not stated that. Among the men who *who* was ordered to come out I was one of them. I was already married.

Q. When you went to fight against the Americans were you an old man or a young man?

A. A young man, but I was strong, vigorous.

Q. Mr. Pena, you testified before the surveyor-general in 1875 that most of the old people who went on the Petaca grant and
53 settled it were dead at that time; that you did not know the boundaries of the Petaca grant well enough to repeat them at the time you were examined at that time. Was that true or false?

A. I did not say so at that time because these same boundaries that I knew then I know now.

Q. In answer to the question at that time by the surveyor-general, "Question. Have you any land within said grant or are you in anywise interested in said claim?" you replied, "I have no land therein and am in no manner or degree interested in this claim."

A. I answered it that way—that is, I did (interrupted)——

Q. Is that true or false?

A. I said so then because they did not put to me the word "land." They did not say to me, they did not make me understand then that they meant the word "land." They said, if I have any interest or not.

Q. Didn't you claim that you didn't have any interest in it at that time?

A. Yes, sir; I said so at the time, but they did not make it plain to me.

Q. You were testifying with reference to a claim for this land and not for any sheep?

A. Yes, sir; but the man did not ask me so. The interpreter did not explain to me what he wanted.

Q. Were you testifying about sheep or land at that time?

A. With respect to the land.

Q. And you stated you did not have any interest in the land?
A. Yes, sir.
Q. Was that true or not?
A. I did not know what he wanted. I thought he asked me if I had any interest in the land, and I did not have any interest.
Q. Were you not testifying about the land?
A. I understood that I was asked if I had any interests, such as sheep and the like.
Q. Were you asked anything about sheep?
A. No, sir; he did not say anything about sheep.
Q. Did he say anything about cows?
By the COURT. You have spent enough time on that.
Q. Did you not on the day before yesterday, June the fourth, in Las Tusas, Rio Arriba County—did you not state to Captain D. Montoya that you knew positively that the Petaca grant was not settled before the acquisition of this territory by the United States; that every one was afraid to go there until after the United States occupied this country, and then everybody went, feeling that they would be protected by the United States? Did you not state that to Captain Montoya on June the fourth of this year at Las Tusas?
A. I did not say so.
Q. Mr. Pena, don't you know as a matter of fact that the eastern boundary of the Petaca grant was the Mesa de Titillo instead of the Arroyo de los Agu-ges that you have testified to here?
54 A. I have not known so. I have only known the Arroyo de los Aguages.
Q. Did you ever hear of a hill in the neighborhood of Las Tusas called the Loma de Tio Ortiz?
A. No, sir.
Q. Never heard of it?
A. No, sir.
Q. Never heard of it within the last five years?
A. No, sir.
Q. Or ten years before that?
A. No, sir.
Q. Never did hear of a hill in that neighborhood called the Loma Tio Ortiz?
A. No. sir.
Mr. SPIESS. If your honors please, I do not care to examine this witness at present, but I will recall him when I shall put in my case.
Mr. REYNOLDS. I object to dividing this case up this way, and if these coplaintiffs have any case or anything to ask *ask* this witness I insist on them asking it now.
Mr. SPIESS. I understand perfectly well that there are only two sides to this case, but when I put proof in to sustain my petition I want it to come at one time and go before the court in one mass and not have it scattered all through the case.
By the COURT. You may proceed as you desire.
Witness excused for the present.

JESUS MARIA OLGUIN, called and sworn as a witness on behalf of the petitioners, testified, through the medium of the official Spanish interpreter, as follows:

Direct examination by Mr. PRINCE:

Q. Where do you live?

A. Culebra, Conejos County, State of Colorado.

Q. Can you tell how old you are?

A. I do not recollect how old I am, because I have lost the statement of the priest of my baptism; but I recollect this, that in the year '44 I was 26 years old.

Q. Where were you born?

A. In the town of Ojo Caliente.

Q. Do you remember the time when the Petaca grant was made?

A. Yes, sir.

Q. Where did you live then?

A. At the town El Ojo.

Q. Do you remember—tell us what you remember in regard to the making of the grant.

A. According to my recollection it was made in the year '36.

Q. State any circumstances, if you remember, in regard to the making of the grant and the occupation of it.

55 A. There was a man who had a grant for eleven years and abandoned it, and then we made a petition for this Petaca grant.

Q. In the year '36?

A. In '36.

Q. Who were the people that made the application, if you remember?

A. I remember some of them.

Q. Who made the application? Tell us.

A. One of them was Jesus Maria Barela; another one was Antonio Martinez; another one, Francisco Antonio Atencio.

Q. And who else?

A. Julian Martinez.

Q. Anyone else, do you remember?

A. Julian Sanchez, Amador Sanchez, Manuel Chavez, Bruno Lucero, Jose Antonia Lucero, Gabriel Vigil, Jose Maria Jaquez.

Q. Any relation of your own?

A. Yes, sir; he was a sort of relative.

Q. Do you know about—did they have their families with them?

A. Yes, sir; they were there with their families at times. They would take them there to dig their ditches and to make their farms, and then they would take them up when the Indians would come in and drive them out.

Q. Do you know how many persons were put in possession there at that time?

A. There were thirty-six, or about thirty were placed in possession.

Q. Do you recollect who made the application?

A. Antonio Martinez, Jose Maria Barela, Julian Martinez, Francisco Antonio Atencio.

Q. What did they do there on this ground—these who made the petition on the behalf of the others of you?

A. They cut the timber off, made ditches, and made their shanteys.

Q. Did they cultivate the ground?
A. Yes, sir.
Q. Do you remember who put them in possession there?
A. Jose Antonio Martinez. He was my brother-in-law.
Q. Now, from that time down to the American war, was there any entire year when these people were not there living?
A. They went there at times, and in summer they would run away from the place, and in winter they would come back again.
Q. Why did they run away?
A. On account of the fear of the Indians.
Q. Did the Indian' make attacks there?
A. Yes, sir.
Q. Did they ever kill anyone there?
A. They killed twelve men about two miles from that place inside of a corral.
Q. What Indians made attacks there?
A. The Utes, Navajoes, and also the Apaches.

Q. Do you know the boundaries of this grant?
56 A. I did not go there when the partition was made, as I was living in a house near Cebolleta when the partition was made.
Q. I ask you whether or not you know the boundaries of this grant.
A. You mean the lines where they were partitioned?
Q. No; I mean of the grant.
A. Yes, sir.
Q. Give them one at *the* time. What is the boundary on the south?
A. From the Canoncito to the Loma de Tio Ortiz.
Q. What was the southern boundary?
A. Canoncito.
Q. Do you know the boundary on the north?
A. La Loma de Tio Ortiz.
Q. What was the boundary towards the sunrise?
A. The San Antonio Mountain to the head of the Arroyo de los Aguages.
Q. He don't understand the question. I will give it to him again.
Q. Give us the boundary on the east side, where the sun rises. (To the interpreter: Explain it to him, please, so he will understand it.)
A. From the San Antonio Mountain to the head of the Arroyo de los Aguages and from there to the Loma de Tio Ortiz and to the Rio de Vallecito.
Q. And on the west. (To the interpreter: Explain it to him so he will understand it.)
A. At the Tio Ortiz and Vallecito River.
Q. You speak of the Tio Ortiz hill. Where is that?
A. From the San Antonio Mountain towards the sunset.
Q. West from the San Antonio Mountain?
A. Yes, sir.
Q. How far from the San Antonio Mountain?
A. I do not know; but, more or less, about three or four miles. I am not certain about distance.
Q. How long have you known that Tio Ortz hill?
A. From the time I was twelve or fourteen years old. It was always

called Tio Ortiz hill. He herded his sheep there and made his ranch there, and they always called it the ranch of Tio Ortiz.

Q. Who herded his sheep there?

A. Tio Ortiz.

Q. Did you ever hear any other hill called the Tio Ortiz hill?

A. No, sir. I have heard of another hill named by the name of Tio Olguin.

Q. But you have never heard of another hill by the name of Tio Ortiz hill.

A. No, sir.

Q. And you have known that country for over sixty years?

A. Yes, sir.

Q. Been over it with sheep and with cattle?

A. Yes, sir.

57 Q. Did you hear the other witness that the hill near Las Tusas was called Tio Ortiz?

A. No, sir.

Q. You never heard any hills near Las Tusas called Tio Ortiz hills, did you?

A. No, sir.

Q. Did you know in his lifetime Jesus Maria Barela?

A. I did.

Q. Is he living or is he dead?

A. He is dead.

Q. Do you know about when he died?

A. About four years ago.

Q That is Jesus Maria Barela. Do you know Juan Ysidro Lucero?

A. I knew him.

Q. Is he living or dead?

A. He is dead.

Q. Do you know about when he died?

A. He died two years ago.

Q. Did you know Jose Ysidro Barela?

A. No; I may have known him, but I do not remember.

Q. Did you know Francisco A. Maese?

A. Yes, sir.

Q. Do you know whether he is living or dead?

A. I understand that he is on a place near Sierra Capitana.

Q. Jose Maria Miera, did you know him?

A. Yes, sir.

Q. Is he living or dead?

A. He is alive.

Q. Where does he live?

A. In Costilla.

Q. Is he an old man or a young man?

A. He is old.

Q. Where did he live before he went to Costilla?

A. He lived at Cebolleta.

Q. And Francisco A. Maese, where did he live before he went to Sierra Capitana.

A. He lived at Conejos and Cebolleta, and then he went to Apishoapal.

Q. Did he ever live at La Petaca?

A. I do not remember whether he ever lived at La Petaca or not.

Q. Do you know whether he always lived in Colorado or whether he went from New Mexico there?

A. It is about twelve or fourteen years ago that he went there.

Q. Do you know where he went from?

A. No, sir. From Cebolleta he went to Conejos.

Q. Do you know whether Jose Antonio Martinez ever was an alcalde?

A. Yes, sir.

Q. Did you ever see him write?

A. Yes, sir.

58 Q. Would you know his handwriting and signature?

A. Yes, sir.

(Showing witness an original paper, the one which has heretofore been identified and introduced in evidence as Petitioners' Exhibit B.)

By Mr. PRINCE. I understand there is no dispute as to the signature, so I will not examine him as to that.

By Mr. REYNOLDS. We will not introduce any evidence; Mr. Tipton has sworn that the governor's signature is genuine.

By the COURT. In the absence of any testimony contrary thereto you can safely rely upon the presumption.

By Mr. PRINCE (proceeding with the examination):

Q. Look at this signature (handing witness the original Spanish document heretofore introduced and identified as Exhibit B) and state whether, in your opinion, that is the signature of Jose Antonio Martinez.

A. It is impossible for me to make any statement to that effect, because I don't know, myself, how to sign my own name. I can not read.

Cross-examination by Mr. BURKHART:

Q. Where do you live, Mr. Olguin?

A. In Los Sauces, in the county of Conejos.

Q. Did you ever live in Petaca?

A. He questions me if I ever lived at Petaca?

Q. Yes, sir.

A. From the Ojo Caliente; yes, sir.

Q. How far is Ojo Caliente from Petaca?

A. I can not give the distance.

Q. About twenty miles?

A. I do not understand so; I think at most fifteen miles.

Q. How far is Ojo Caliente from Las Tusas?

A. I know that it is far, but I have no ability to state distances.

Q. All these people that you state went to the Petaca when you were a young man lived at Ojo Caliente?

A. Yes, sir.

Q. They had their houses down at Ojo Caliente, didn't they?

A. Some had their houses there and others at Rito Colorado.

Q. And they came and went from there to the cañon of the Petaca, didn't they?

A. Yes, sir.

Q. And the people that lived within the boundaries that you have given here lived on the Petaca River, didn't they?

A. These people went there from time to time to work there.

Q. They only went to the river of Petaca?
A. Yes; they went there to work there.
59 Q. Yes; they went to the river?
A. Yes, sir.
Q. How long have you lived in Colorado?
A. I am not certain, but I think it was in '55 that I went to Conejos.
Q. You have never lived in New Mexico since that time?
A. No, sir; never.
Q. And when you were in New Mexico you lived in Ojo Caliente?
A. Yes, sir.
Q. Jesus Maria Barela, the one you testified that you knew—where did he live?
A. At Ojo Caliente.
Q. How long did he live there?
A. I do not know; he lived there for some years.
Q. When he died, did he live there?
A. He died in Costilla?
Q. Have you any interest in this grant, Mr. Olguin?
A. No, sir.
Q. Who told you—where did you learn the boundaries that you have testified to as the boundaries of the Petaca grant?
A. From my own brother-in-law, because I was with him there when he delivered the possession to the people that purchased the land from him?
Q. The people generally around there recognized the boundaries that you have mentioned as the boundaries of the Petaca grant, didn't they?
A. Yes, sir.
Witness excused.

JOSE ANTONIO LUCERO, a witness called and sworn on behalf of the petitioners, testified through the medium of the official Spanish interpreter as follows:

Direct examination by Mr. PRINCE:

Q. Where do you live, Mr. Lucero?
A. In Culebra.
Q. In what State?
A. In Colorado.
Q. How old are you?
A. I am going — 76.
Q. Where were you born?
A. At Ojo Caliente.
Q. When did you first move from Ojo Caliente to Colorado?
A. It is many years ago; I do not remember.
Q. Do you remember when the Petaca grant was made?
A. Yes, sir.
Q. When was it?
A. In "'46."
60 Q. Do you remember the time of the American war?
A. Yes, sir.
Q. How many years before that was the Petaca grant made?
A. In those years, in '46.

Q. How many years before the American war?
A. I do not remember.
Q. More or less, as well as you can remember?
A. I can not remember.
Q. Were you ever on the grant so made; were you there when the parties were put in possession?
A. Yes, sir.
Q. How many were there?
A. Many varas were given along the river; thirty-six.
Q. Were you one of them; did Jose Antonio Lucero receive, or was that the name of a man to whom varas were given along the river, and is that yourself?
A. I am the same person.
Q. Do you know who made the application for that land?
A. Yes, sir.
Q. Who were they?
A. Julian Martinez.
Q. Do you remember any one else?
A. Francisco Antonio Atencio.
Q. Well, after the grant was made, what did the people do there?
A. They worked there some.
Q. What kind of work?
A. They dug ditches and they began to make some farms.
Q. Well, did they build houses there.
A. Yes, sir.
Q. From that time onward did the people dwell continuously there or not?
A. They continued there some, but sometimes they would not be there on account of the Indians.
Q. Why did they have to leave on account of the Indians?
A. On account of the small numbers of the men and on account of the hostility of the Indians; they took their families down there, and then they would run risks.
Q. Run risks; what do you mean by that?
A. The danger of being killed (by the interpreter).
Q. Oh, run risks; excuse me; I didn't understand you. What Indians made attacks there?
A. The Navajoes.
Q. Any others?
A. The Utes.
Q. Do you know whether the Indians ever killed any one near there in those attacks?
A. Yes; they did. There was one place at which they killed fourteen.
Q. Where?
A. They were killed fourteen miles distant from the place.
Q. Some of the people were settled there?
61 A. No, sir.
Q. Whereabouts was this place that they were killed?
At Cebolleta.
Q. Do you know whether the Indians made attacks there more than once?
A. Yes, sir.

Q. How often did they go there?
A. At least every three years, and sometimes three times in one year.
Q. Did any of the peo'e stay there in the winter time?
A. Yes, sir.
Q. Was there an entire year when settlers were not there?
A. No, sir; because the men were when their families were taken out.
Q. Do you remember the time of the American war?
A. Yes, sir.
Q. Were there settlers there then?
A. Yes, sir.
Q. How long did you say you lived on the grant?
A. I lived there something over ten years.
Q. Do you know the boundaries of the grant?
A. I do; yes, sir.
Q. What is the southern boundary?
A. At the stream by the place at a big rock (Penasco) that lies at the Cebolleta.
Q. Do you know what the east boundary is? (To the interpreter: Make it plain; please explain it to him.)
A. The Arroyo de los Aguages.
Q. And what is the north boundary?
A. A hill by the name of Loma de Tio Ortiz.
Q. What is the west boundary?
A. The line of the Vallecitos.
Q. This Tio Ortiz hill—where is this?
A. It lies at the head of the Arroyo de los Aguages.
Q. Do you know the San Antonio Mountain?
A. Yes, sir.
Q. How is this Tio Ortiz hill situated with reference to the San Antonio Mountain?
A. I think it is about four miles, more or less.
Q. Which way?
A. To the west.
Q. How long have you known that hill by the name of the Tio Ortiz hill?
A. Since I was very young.
Q. Did you ever hear of any other hill in that part of the country called by the name Loma de Tio Ortiz?
A. No, sir.
Q. Do you know where Las Tusas is?
A. Yes, sir.
Q. Did you ever hear of any hill near Las Tusas called Tio Ortiz hill?
62 A. No, sir.
Q. Did you know or did you not know Jesus Maria Barela?
A. Yes, sir.
Q. Is he living or dead?
A. He is dead.
Q. How long ago did he die?
A. I don't now recollect; it was a long time ago. I think it is six or five years that he died.

Q. Juan Ysidro Lucero—did you know him?
A. I knew him.
Q. Is he living or dead?
A. He is dead.
Q. How long ago did he die?
A. I do not remember. I was on the other side of the mountain.

Cross-examination by Mr. BURKHART:

Q. How old did you say you were?
A. I said 76.
Q. How old were you when you were put in possession of your allotment on the Petaca grant?
A. I was going on 29 years of age.
Q. You were put in possession in 1846 by the alcalde?
A. Yes.
Q. You are certain of that?
A. Yes, sir.
Q. You know it was 1846?
A. It was so stated among the people that understand it.
Q. Don't you know it was?
A. No, sir.
Q. You don't know, then, what year it was?
A. I do not know of my own knowledge, but I know from communication.
Q. But you do know that you were 29 years old at that time?
A. Yes, sir.
Q. You were married at that time, were you?
A. No, sir; I was single. I was married the next year.
Q. You were married when you were thirty, then?
A. Yes, sir.
Q. Now, try to be certain—be certain as to how old you were when you were married. Tell the court your exact age at that time.
A. I say that I was going on thirty.
Q. And you were put in possession the year before?
A. Yes, sir; and about the middle of the year I was married.
Q. How much land did the alcalde give you?
A. One hundred and fifty varas.
Q. Was that grant given to Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, or was it made to all the thirty-six persons that went there?
A. This Julian Martinez was petitioned by the people to ask for it.
63 Q. Was the grant made to those two men alone, or was it made to all?

By Mr. BARTLETT. I object to that, if the court please. That is a question of law which will have to be determined by the court.

By the COURT. Objection sustained.

Q. There is a big mesa just east of the Petaca River, isn't there—a very high mesa?
A. Yes, sir.
Q. And it is called the Mesa de Titillo?
A. Yes, sir; the Mesa de Titillo, and the peak is on the top of it.

Q. Don't you know that was the east boundary of that grant instead of the Arroyo de los Aguages?

A. I don't know anything about the mesa, but I know about the Arroyo de los Aguages.

Q. Why is this tract called Petaca?

A. There is at the plain there a rock—a square rock; that is why they call it La Petaca.

Q. Where is that; near the town of Petaca?

A. It is at the edge of the mesa.

Q. Down in the river?

A. On the plain.

Q. Near the river, in the cañon?

A. Yes, sir.

Q. Big rock, known as Petaca?

A. Yes, sir.

Q. And that is where your tract gets its name from?

A. Yes, sir.

Q. When was the first time you ever went to the Tio Ortiz hill?

A. I went out there at different times when I was a boy, herding sheep.

Q. Can you see that hill from the town of Petaca?

A. No, sir; there is a mesa between, or it might be seen.

Q. Is it a long distance away?

A. Yes, sir.

Q. How long would it take you to go over there?

A. About a half a day or less.

Q. That is all.

Witness excused.

By Mr. BARTLETT. I will state to the court that we have several other witnesses here whose testimony is very much the same as the witnesses just examined, but we would like the indulgence of the court and will try to finish this afternoon; we will make it as short as possible.

By the COURT. Very well, Mr. Bartlett; proceed.

64 AGAPITO TRUJILLO, a witness called and sworn on behalf of the petitioners, testified through the medium of the official interpreter as follows:

Direct examination by Mr. PRINCE:

Q. Where do you live, Mr. Trujillo?

A. At La Petaca.

Q. How long have you lived there?

A. I do not know; I do not remember well.

Q. More or less, how many years have you lived there?

A. Something over fifty years.

Q. Do you know the boundaries of the Petaca grant?

A. Yes, sir.

Q. What is the east boundary?

By Mr. REYNOLDS. I object. The title papers have been introduced and declared upon, which set up the boundaries, and no evidence can be introduced here which in anywise varies from or effects the declarations

therein, as it is not alleged that any of the boundaries are indefinite or uncertain, and this proof is unnecessary unless they are indefinite.

By Mr. PRINCE. We are confronted here with the statement that there are two Tios by the name of Tio Ortiz, either one of which might be called for the boundary. We have a perfect right to show which one of the two hills is known as the Tio Ortiz.

By Mr. REYNOLDS. I understand perfectly well that there is a dispute about two boundaries, but you do not ask him that. You ask him the boundary call. You have a perfect right to ask him the location of the objects called for.

By the COURT. Proceed.

Q. What do you understand to be the eastern boundary of the grant?
A. To the side of the Aguages—the Arroyo de los Aguages.
Q. And what do you understand to be the northern boundary?
A. The San Antonio Mountain.
Q. Do you know a hill called the Tio Ortiz hill.
A. Yes, sir.
Q. Where is that?
A. On the north.
Q. How near is it to the San Antonio Mountain?
A. More or less, four miles.
Q. Which way is it from the San Antonio Mountain?
A. To the south and to the north.
Q. Which way is the Tio Ortiz hill from the San Antonio Mountain?
A. Towards the Rio del Vallecito.
Q. Do you know a hill called the Cerrito de la Cruz?
A. Yes, sir; I have heard it called so, but I do not know.
Q. Do you know where that is?
65 A. Yes, sir.
Q. Is that the same hill as the Tio Ortiz hill?
A. It is in the same direction.
Q. Is it the same hill or not?
A. It is another one in this direction—it is apart from it.
Q. Did you ever hear of any other hill called the Tio Ortiz hill except this one near the San Antonio Mountain?
A. No, sir.
Q. Do you know the Arroyo de los Aguages is the east boundary? Do you know that in the same way that you know that the San Antonio Mountain is the north boundary?
A. Yes, sir.
Q. And do you know the Tio Ortiz Mountain in the same way that you kno' the San Antonio Mountain?
A. Yes, sir.
Q. Where do you live?
A. At La Petaca.
Q. How long have you lived there?
A. I do not remember.
Q. How old are you?
A. Fifty-five.
Q. When was the first time you ever went upon this grant?
A. Many years ago; I do not remember how long ago.

Q. When was the first time you heard of the boundaries of it?
A. I do not remember.
Q. Have you any interest in the grant?
A. No, sir.
Q. On whose land do you live?
A. On the land of my mother-in-law.
Q. Your mother-in-law has an interest in the grant?
A. Yes, sir.
Q. What is her name?
A. Maria Altagracia Cruz.
Q. You have lived there for a long time, you say?
A. Yes, sir.
Q. And have always heard the San Antonio Mountain was the northern boundary?
A. Yes, sir.
Q. That's all.
Witness excused.

ANICETO MARTINEZ.

Direct examination by Mr. PRINCE:

Q. Where do you live, Mr. Martinez?
A. In San Antonio, in the county of Conejos, State of Colorado.
Q. What was your father's name?
A. Julian Martin.
Q. And what was his father's name?
66 A. Jose Antonio Martinez.
Q. You are acquainted with the Petaca grant?
A. Yes, sir; but at the time of the settlement I was not on it.
Q. Does he know the grant?
A. No.
Q. Do you know where it is?
A. Yes, sir. I know it from the people of those times.
Q. Did you ever live on the Petaca grant?
A. Yes, sir.
Q. Before you went to Colorado?
A. Yes, sir; my mother had land there, and my father had land there until his interest was sold out.
Q. Have you any interest in the grant now?
A. No.
Q. Do you know a hill called the hill of Tio Ortiz?
A. Yes, sir.
Q. Where is it?
A. It is to the north, because as to the title papers so declare that then on the east side the line was on the Arroyo de los Aguages and following its course it turns around the San Antonio Mountain to the west.
Q. I want to ask you about the hill Tio Ortiz itself. Where is that?
A. At the head of the Arroyo de los Aguages lies the Loma Tio Ortiz.
Q. How far is that from the San Antonio Mountain?
A. It may be four or five miles, more or less.
Q. In what direction is it from the San Antonio Mountain?

A. It is to the east a little bit, and the mountain is between east and north.

Q. What mountain?

A. The San Antonio Mountain.

Q. It is east and north of the Tio Ortiz hill. *Have* long have you heard that called the Tio Ortiz hill?

A. From the time when I was ten or twelve years old.

Q. Did you ever hear of any other hill called the Tio Ortiz hill?

A. No, sir.

Cross-examination by Mr. BURKHART:

Q. Did you also hear that hill called Cerrito de la Cruz?

A. No.

Q. You don't know anything about the boundaries of this grant except what people have told you what the papers contained?

A. As I have stated here, that is the only thing I know.

Q. That is all you know about it?

A. Yes, sir.

Q. That's all.

Witnessed excused.

67 By Mr. BARTLETT. That is all the evidence we have, if the court please, and I understand Mr. Spiess wants to offer something. We have some other witnesses, but none of them are in a hurry to get away.

For and on behalf of the claimants in suit number in this court, represented by Charles A. Spiess, esquire, and in support of the petition filed therein claiming an interest in the grant on trial, the following evidence was offered:

JOSE ANTONIO LUCERO, a witness heretofore called and sworn as a witness on behalf of the petitioners, recalled.

Direct examination by Mr. SPIESS:

Q. You were one of the grantees in the Petaca grant, were you not?

A. Yes, sir.

Q. State whether or not you were placed in possession of the Petaca grant.

A. Yes, sir; I was.

Q. State who else, if you know, was placed in possession of that grant.

A. Jose Francisco Lucero.

Q. Go on and state the others.

A. Jose Antonio Lucero.

Q. Any other?

A. Bruno Lucero.

Q. Any other?

A. Mariano Pena.

Q. Any other?

A. Manuel Lujan, Julian Martin (interrupted)——

Mr. REYNOLDS. Do you intend to show that any others than those mentioned in the act of possession were placed in possession? And, if not, I suggest that the act of possession shows for itself.

Mr. SPIESS. Very well; I have all I want.

Q. Where were you, if you remember, at the time the Petaca grant was made?

A. I was at La Petaca.

Q. State the circumstances as you remember them about the making of the Petaca grant.

A. Julian Martinez, Francisco Antonio Atencio, and Antonio Martinez were commissioned by the people.

Q. Go on and state all you remember about it.

A. As well as I can state, the grant was made for the benefit of our family.

Q. I will ask you the people who were placed in possession of the Petaca grant—the ones who sent these three men as a commission to have the grant made for the people?

A. Yes, sir; all of them assembled.

68 Q. And then the ones that assembled and sent this commission of three people to have this grant made to them and the ones that were placed in possession, were they the ones that were placed in possession of the Petaca grant?

A. All of them.

Q. Was this commission sent by the people to ask for this tract of land in the name of the people who sent to them?

A. Yes, sir.

Q. As you understood it at that time, this commission were the agents of the people who had assembled and sent them here?

A. Yes, sir.

Q. When you were placed in possession of this tract of land were you placed in possession of this tract of one hundred and fifty varas each in severalty?

A. Yes, sir; with these common lands. That which remained of the land we claimed as common land.

Q. That which remained within the boundaries of the grant you held in common (interrucled)——

By Mr. Reynolds. That is a question of legal construction, if your honors please.

By the Court: Yes; he need not answer that.

Examination by Mr. Prince:

Q. Do you remember for whom Jose Julian Martinez asked for this land?

A. For the people who had assembled from the place and asked (interrupted)——

Q. I ask you for whom Jose Julian Martinez asked for this land?

A. For the possessors of La Petaca—those who took possession under the claim made.

Q. Do you remember anything about the action with reference to the sons of Jose Francisco Atencio?

A. Yes.

Q. What was that?

A. They were not admitted for the reason that they were minors.

Q. And you think that in his application Jose Julian Martinez asked for the land for all of the people there, do you?

A. Yes, sir.

Cross-examination by Mr. REYNOLDS:

Q. You were placed in possession there at the time all the others were placed in possession, weren't you?

A. Yes, sir.

Q. How much were you placed in possession of?

A. One hundred and fifty varas.

Q. You sent these commissioners down here to Santa Fé to see if the governor would give this grant to you?

A. Yes, sir.

69 Q. They came down here, didn't they?

A. Yes, sir.

Q. Personally?

A. Personally.

Q. Came back and made their report?

A. Yes, sir.

Q. Bring the papers back with them?

A. Yes.

By Mr. BURKHART:

Q. Are you the same Jose Antonio Lucero who was given possession of a piece of land on the Conejos River in the grant claimed to have been made by the prefect Archuleta?

A. No, sir.

Q. Where did you get that land—from Governor Bent?

A. No, sir.

Q. Have you any land on the Conejos River?

A. No, sir; I do not know of this land. I do not know it. I took it—I took it from here to there at the beginning.

Q. On the Conejos River?

A. Yes, sir.

Q. In what year did you get that on the Conejos River?

A. I do not remember.

Q. Was it about 1842?

A. It must have been. I do not remember.

Q. Did you ever go back after you went to the Conejos River to live at Petaca?

A. No, sir.

Q. You have lived at Conejos ever since you went up there?

A. No, sir; I moved to the other side of the mountains, to Walsenberg.

Q. Did you go to Colorado with Jose Dolores Bernal, Jose Antonio Cordero, Jose Felix Cordero; did you go with them?

A. I went along with my family.

Mr. SPIESS. That is all the testimony for the parties I represent.

On behalf of the petitioner in case number 153:

M. Z. FARWELL, called and sworn as a witness in his own behalf, testified as follows:

Direct examination by Mr. BARTLETT:

Q. You are the petitioner in this case?

A. Yes, sir.

Q. When did you first become acquainted with this grant and under what circumstances?

A. I came to New Mexico seven years ago, in the summer.

Q. Did you become acquainted with this grant before that time?

70 A. I had never seen it, but I had become acquainted with it from the title papers.

Q. Explain to the court, now, how you came to purchase that grant.

A. My father came to New Mexico in 1883; before coming he had some correspondence with the surveyor general, Mr. Atkinson, who had invited him to come out, and told him that there were some very nice properties for sale. I, of course, was a young man at that time, but was very much interested in whatever my father did, and when he returned he told me of 'his property, and that he thought of buying it, and afterwards he did buy it.

Q. What is your father's name?

A. S. S. Farwell.

Q. Is he a brother of M. Z. Farwell?

A. Yes, sir. When I finished my studies at college I came to Tres Piedras.

Q. When you first went on the grant, seven years ago, were the boundaries shown you; and, f so, by whom?

A. The boundaries were shown by people living there at Tres Piedras; and then, of course, I had a map of the grant which was made in 1878, and the boundaries given so I could ascertain them.

Q. When you first went there did you hear of any hill called the Orti' hill?

A. Yes, sir.

Q. State where it is.

A. It is right at the head of the Canoncito de los Aguages, so called. The cañon ends right on the hill.

Q. What distance is it from the San Antonio Mountain?

A. About three miles.

Q. In what direction?

A. To the west.

Q. Did you ever hear of any other hill called the Tio Ortiz hill in that neighborhood; and, if so, when did you first hear of it?

A. I never heard of any other Tio Ortiz hill; never heard of any hill called Tio Ortiz hill until shortly after I came to New Mexico, in talking with some Americans who lived at Tres Piedras. They said that there was a hill near Las Tusas plaza which the railroad company was trying to prove was the Ortiz hill, but I have asked many Mexicans, old-timers there, and they have invariably replied (interrupted)——

By Mr. REYNOLDS. I object to this testimony. It is absolutely incompetent; purely and simply manufactured. He can't come here and tell what some old man told him. They can only bring some old men here who are acquainted with the common reputation and general understanding in the community. Here this young man comes along forty or fifty years after the treaty of Guadalupe Hidalgo and tries to testify as to what the understanding was then. Let them prove it by people who are old and have known it since the time of the treaty.

71 By the COURT. It is certainly not very material, but he may proceed.

A. (Continuing.) The very reply was that near San Antonio Mountain it can easily be seen from the town of Tres Piedras, and when you ask them where it is they simply point to it.

Q. Did you ever see the original grant papers in this case before to-day?

A. Yes, sir.

Q. When did you first see them?

A. I saw them four years ago, I think; in the summer—August, '91.

Q. Was your attention ever called to any erasures or changes that had ever been made in that document, and did you ever discover or know of any yourself?

A. I did not. I only examined it once, and my father was with me. We came here to Santa Fé and went to the surveyor-general's office and asked for the papers that were on file in the Petaca grant case, and they gave them to us, and we looked them over. That was before he deeded his interest in the property to me, and he said in going there that he desired to give me all the information in regard to the property that he had.

Q. Then you didn't know of the interlineations or erasures?

A. No, sir.

Q. How long have you been in possession of this grant?

A. I have been in possession four years.

Q. And your father?

A. Since 1883.

Q. You and your father have been in the actual possession of and exercised control of this land since 1883?

By Mr. REYNOLDS. Objected to as immaterial.

By the COURT. Objection sustained.

Cross-examination by Mr. REYNOLDS:

Q. How long was it after your father purchased this grant that you came out here?

A. Five years.

Q. From whom and through whom did he purchase it?

A. He purchased from several different parties. The largest interests were sold by Frederick Walsen, and Mr. Gildersleeve also owned a portion of it, and Sulzbacher, of las Vegas, also.

Q. When you came out here was there any difficulty about these boundaries suggested by anybody?

A. No, sir.

Q. When was the first time that you ever heard of any difficulties about the boundaries of this grant?

A. A short time ago—when I learned that you were inquiring up there for witnesses.

Q. You came out here with your father before he deeded the
72 property to you, and went with him to the surveyor-general's office, and you say you examined everything there?

A. Yes, sir.

Q. Did you examine a plat that was filed in the surveyor-general's office—plat that was filed in 1875?

A. Yes, sir.

Q. (Handing witness sketch map filed in surveyor-general's office, just referred to.) Did you see that?

A. I saw this paper or one very much like it.

Q. Did you also examine the plat on file from which you purchased this property, and did you compare it with this one?

A. Yes, sir.

Q. Did you notice any discrepancies or differences between the two, and did that suggest anything to your mind?

A. Yes, sir.

Q. What suggestion did that make to your mind?

A. I called my father's attention to the differences mentioned by you, and he stated that this sketch, as it is here called, had been made before any survey, and that Surveyor-General Atkinson that it was doubtless made from heresay by some one who had given the distance from the Ortiz Hill to the south boundary of the grant from some Mexican, who had told him probably it was fifteen or twenty miles, and that it was common knowledge that Mexicans always underestimated distances, and he further said—that is, my father—that there was abundant evidence to prove that the Tio Ortiz Hill was where the survey of '78 made it, and as it was given in the original title papers as the northern boundary of the grant he said there was no doubt it.

Q. Then, as you locate that north boundary, the grant extends from north to south about twenty-eight miles?

A. Yes, sir.

Q. And from east to west?

A. It will average ten miles across.

Q. You knew that that claim had been filed before the surveyor-general by a Mexican who had or claimed to own the grant and through and under whom you were purchasing it?

A. This sketch map?

Q. You know that claim had been filed in the surveyor-general's office by persons through and under whom you claimed and from whom your title was to be derived?

A. I don't think any one who had an interest in that grant filed that map.

Q. You say you didn't know until a few months ago that there was any controversy about the boundaries. Didn't that sketch map suggest a controversy?

A. No, sir; because it was satisfactorily explained.

Q. Well, that claim under that map, with your knowledge and information of the country, would put this grant with that line as represented there for the north boundary—would run this grant about west of Las Tusas?

73 A. I am not sure about that, but through the practical knowledge that I have acquired I am sure it was a novice in the business who made that sketch map like that.

Q. I am asking you about the intimation you had as to the probable differences.

A. You have asked me about what I thought of the validity of this grant, and that is my answer.

Q. And you hav'n't any doubt about it now?

A. No, sir.

Q. That is all.

Redirect examination by Mr. BARTLETT:

Q. About how far is it from the south boundary of this grant to Buckman's mill, at Las Tusas?

A. I don't know; going south from Buckman's mill it is through a very impassable country.

Q. How far is it from the mill to the north boundary?

A. About twelve miles, I should say; it is a little to the north of centre.

Q. How far from the south boundary to the Las Tusas mill?

A. It would necessarily be the difference between twelve and twenty-eight; about sixteen miles.

Witness excused.

Court here took an adjournment until to-morrow morning at 10 o'clock a. m.

SATURDAY MORNING, *June , 1895.*

Court met pursuant to adjournment, all present as on yesterday, and the trial of the above-entitled causes, consolidated, as before stated, was continued:

By the COURT. You may proceed with the case.

By Mr. BARTLETT. I desire to offer the depositions—the testimony taken before the surveyor-general in 1878—the testimony of Jesus Maria Parela and Juan Ysidro Lucero, whose testimony was taken before the surveyor-general June 27th, 1877, under a petition to take the same filed in that office, in regard to the southern boundary of this grant, which petition was filed June 4th, 1877.

(Counsel then reads to the court said testimony of Jesus Maria Barela and Juan Ysidro Lucero.)

Mr. BARTLETT. That is all the testimony we have, if the court please. Petitioners rest.

74 MORRIS LEICHTLE, called and sworn a' a witness on behalf of the United States, the defendant, testified as follows:

Direct examination:

Q. What is your name and residence?

A. Morris Liechtle; I live at Frebenville.

Q. In what county is that and where with reference to the town of Petaca?

A. In Rio Arriba County, about three miles south from Petaca.

Q. How long have you lived in that neighborhood?

A. Eleven years this coming June.

Q. What official position do you hold, if any?

A. I am mining——

Q. Do you hold any official position in the town of Frebenville?

A. I was assistant postmaster there.

Q. Do you know a place called the Tio Ortiz hill in that neighborhood?

A. Well, all I know about it is what the people say about it—what the people call it there—some of the people around there.

Q. What do they say?

A. They call it, the mountain there, Tio Ortiz hill.

Q. What mountain? Mountain where?

A. It is called *to* Las Tusas.

Q. Well, tell us what they said.

A. Well, I hear them call it by that name. I can not exactly say who it was. I just hear it spoke about, that mountain. I can not say who the parties were.

Q. Is that hill so known in that community?

A. Well, I hear them talk about it sometimes in that way in the neighborhood.

Q. Ever since you have been there?

A. Well, yes; always. Sometimes they talk about it and I hear them talk about the hill.

Q. When you first went there, did you hear them talk about it?

A. No; not then.

Q. When did you hear them talk about it?

A. The last three or four years.

Q. Were the people who lived in that neighborhood Mexicans—those that talked about that Ortiz hill?

A. Some lived down in the neighborhood of that hill, in that part of the country; some lived there. I don't know the names or who they were.

Q. Were they Mexicans?

A. Yes, sir.

Cross-examination by Mr. BARTLETT:

Q. How long have you lived in that vicinity, Mr. Leichtle?

A. Going on eleven years.

75 Q. It is only within the last three or four years that you have heard this hill near Las Tusas called Tio Ortiz hill?

A. I heard them call it that. I heard them speak about it.

Q. That is only within the last three or four years?

A. Yes; in the neighborhood down there.

Q. Before that time had you heard of any other mountain called by that name?

A. Well, I have heard several mountains called, but I didn't know where they was or what mountains they was.

Q. Do you know where the San Antonio Mountain is?

A. The San Antonio Mountain? Yes, sir. I see it far off. I never was up there.

Q. Did you know of any hill near that mountain called the Tio Ortiz?

A. No, sir.

Q. Who told you about the name of this mountain?

A. Which mountain?

Q. This same one which you have testified about.

A. I don't remember who the parties are now.

Q. How did they happen to speak of it?

A. They happened to speak of it. I was going up in the neighborhood, looking for horses.

Q. That's all.

Witness excused.

BENIGNO TRUJILLO, called and sworn on behalf of the defendant, The United States, testified through the medium of the official Spanish interpreter as follows:

Direct examination by Mr. BURKHART:

Q. What is your age, name, and residence?

A. I was born in the year '53, and I live at La Cueva, New Mexico.

Q. Where were you born?

A. At El Rito.

Q. How long did you live in that section of the country?

A. I have always lived there.

Q. Where does your father live?

A. In this same place.

Q. Are you acquainted with the valley (cañon) of the Petaca?

A. Yes, sir.

Q. How long have you know' that?

A. I don't remember how long I have known it. I have known it for many years.

Q. Do you know a hill in that cañon called the Tio Ortiz hill?

A. I know two hills; one that is said to be below and the other that is said to be above. When I was young, myself and my father were there, and my father told me at that time that that loma was
76 called Loma Tio Ortiz; that was opposite a mill that is on a small *here* there.

Q. Where?

A. Opposite the mill, to the east.

Q. What mill and what was the name of the place?

A. Las Tusas.

Q. Whose mill?

A. Mr. Buckman's.

Q. How long ago was that called the Loma de Tio Ortiz?

A. I do not remember how many years. I do not remember with cer*a*inty. I was young yet.

Q. About how many years ago; were you a boy yet?

A. I was young. I must have been eleven years; it is possible I was twelve years old; but I do not know if my father knew certainly if that was the hill or not.

Q. When did your father die, and how old was he when he died?

A. Seventy-three.

Q. Was he an old man when he died?

A. He was born in the year six.

Cross-examination by Mr. BARTLETT:

Q. Where is the other hill which you spoke of named Tio Ortiz?

A. It is above, on a lake that is called Laguna de Tio Ortiz; that is what the people call it.

Q. Where is the head of the Arroyo de los Aguages with reference to that?

A. It lies on the other side.
Q. How far is this hill from the San Antonio Mounta'n?
A. About four miles, I think.
Q. In what direction?
A. To the west; it is below the west.

Redirect examination by Mr. REYNOLDS:

Q. How far is this last Tio Ortiz hill from Petaca?
A. The one that is at the head of the Arroyo de los Aguages?
Q. Yes; at the head of the Arroyo de los Aguages.
A. About twelve miles, I think. I do not know with certainty.
Q. Have you ever been to it?
A. Yes, sir. I have been all over all those places.
Q. Horseback or on foot?
A. I have been on horseback and on foot with the sheep.
Q. How long would it take you to go there from Petaca?
A. I do not know how much it would take because I have been sometimes on foot and sometimes on horseback, and I could not tell.
Q. In what direction is it from Petaca?
77 A. Somewhat to the north; this side of the north.
Q. Do you mean northeast or northwest?
A. To the west of the north.
Q. Did you ever hear that Arroyo de los Aguages called by any other name?
A. No, sir. There are some small hills called Cerritos de la Cruz, but they are below.
Q. How far below?
A. About three miles.
Q. What do you mean by below—in what direction?
A. I mean that that arroyo runs to the east, and in that direction the hills lie.
Witness excused.

ANTONIO ABEYTIA TORRES, a witness called and sworn on behalf of The United States, the defendant, testified through the medium of the official Spanish interpreter as follows:

Direct examination by Mr. BURKHART:

Q. What is your name, age, and residence?
A. Antonio Abeytia Torres; I live at La Petaca; I am forty years old.
Q. How long have you lived in that country?
A. I was born there and there is my residence.
Q. Where does he live now?
A. La Petaca.
Q. Do you know a hill in the Petaca cañon called the Tio Ortiz hill?
A. Yes, sir.
Q. How long have you known it?
A. Up to the time I had understanding; I was nineteen or twenty years old.
Q. Is that hill generally known by most of the people there by that name?
A. Yes, sir.

Cross-examination by Mr. BARTLETT:

Q. Where is this hill that you speak of in the Petaca cañon, with reference to the town of Petaca?

A. It is more or less on this side of the San Antonio Mountain.

Q. Is there a lake at the base of it?

A. Yes, sir.

Q. That's all.

78 Redirect examination by Mr. BURKHART:

Q. Who was talking to you about the location—has any one talked to you about the location of this hill since you have been here; and if so, whom?

A. I remember that one time Captain Montoya and another person talked to me about those hills, and asked if I knew a place by the name of Tio Ortiz (interrupted) ——

Q. Did Mr. Tipton talk to you about the location of this Tio Ortiz hill about six weeks ago, and in the presence of Mr. Montoya?

A. Yes, sir; we talked about that, and I told him for certain that I knew that loma.

Q. What loma?

A. The Loma de Tio Ortiz.

Q. Didn't you tell Mr. Tipton that there was a Tio Ortiz hill near Buckman's mill, and that the old people had told you?

A. No, sir; I told him that I knew the loma of Tio Ortiz.

Q. Didn't you tell him it was situated near Las Tusas and near Buckman's mill?

A. No, sir; I told him for certain that I knew the Loma de Tio Ortiz.

Q. Didn't you tell him where that loma was located?

A. I do not recollect it; I told him that I knew it.

Q. Did you or not tell Mr. Tipton, in the hearing of Captain Montoya, on the 26th of April of the present year, at Petaca, that you knew the Tio Ortiz hill, and that it was situated at or near Las Tusas and near the mill of Mr. Buckman, and that the old people in the country had told you that was the name of that hill, and that you were asked what people, and you said they were dead, but that Serafin Pena told you?

A. I told this gentleman, in the presence of Mr. Montoya, that I knew from the old people where the loma was, what was the loma of Tio Ortiz; I didn't tell him it was situated at Las Tusas or at the mouth of the cañon of La Petaca.

Q. Have you talked with anybody since you arrived in town last night about the location of the Tio Ortiz hill; and if so, whom?

A. No person.

Q. That's all.

Witness excused.

D. MONTOYA, a witness called and sworn on behalf of the defendant, The United States, testified as follows:

Direct examination by Mr. BURKHART:

Q. Where do you live, Captain Montoya?

A. Tres Piedras.

Q. What is your age?

79 A. I will be fifty-five next February.

Q. Where were you born, Mr. Montoya?

A. I was born at El Rito, Rio Arriba County.

Q. How long have you lived in the country in and around El Rito?

A. In Rio Arriba County all the days of my life, with a few exceptions.

Q. Mr. Montoya, did you hear Mr. Serafin Pena testify here yesterday on the witness stand in this case?

A. Yes, sir.

Q. Did you have any conversation with Mr. Serafin Pena on last Tuesday at Tres Piedras with reference to this grant? And if so, state what it was.

A. I did. I had conversation. I had been with Mr. Farwell over to Las Tucas to Buckman's mill, and we had come back to Tres Piedras about five or six o'clock. I can't tell exactly when I come over to hom'; to Tres Piedras. I was standing on the corner of my residence, and over near the schoolhouse I saw about six or seven men—all men who lived in Petaca—standing there on the street. I was reading the newspaper, and Serafin Pena he comes over to me, and I asks him *and I asks him* what he was doing with so many people over from Petaca with him, and he told me, "I am going to Santa Fé on business about the Petaca grant. I am going to meet one of the committee from Conejos, Colorado. I expect to meet him on the cars of the railroad." I saw there with him five or six others, and he says, We will meet this man on the cars and go to Santa Fé to testify to the possession of Farwell and the people, as we have a claim to that grant under title of ourselves, and we have appointed a committee of three—he gave the names; I don't recollect—to represent this grant, and that they lived at Conejos, and if the man is there at the depot I will go to Santa Fé, and if he was not there I will have to go back. That was the conversation he had with me.

Q. Did he tell you anything about the settlement of the grant?

A. Yes, sir; he mentioned something about it. I asked some questions of him, and he told me if I wanted to know what the truth of when that grant was settled was he would tell me; that some people undertook once to settle that country, and that they did come there and put up stakes; not making any improvements, but just staking the land, portioning certain portions of the land by dividing it among themselves, but that they never went to live there until the Americans took possession of New Mexico; then, under the United States, after a few years, they went on there, feeling that they had the protection from the Government, and they went there and settled.

Q. Have you traveled through that country up to the northern boundary a good deal?

A. Yes, sir; frequently.

Q. When did you first go through that part of the country?

A. The first time was in 1857. I lived there near Petaca.

80 Q. Do you know a hill in that country called the Cerrito de la Cruz?

A. That is situated up above the San Antonio Mountain.

Q. Did you at that time ever hear of a hill up in that neighborhood called the Tio Ortiz Hill?

A. No, sir.

Q. Do you know of a hill up there now called the Tio Ortiz Hill?
A. Yes, sir.
Q. What was that known as in 1857?
A. Was known as the Cerrito de la Cruz.
Q. Captain, was you with Mr. Tipton about the 26th of April, at Petaca, when he had a conversation with Antonio Abeytia Torres?
A. Yes, sir.
Q. What was that conversation?
A. The conversation was—I went with Mr. Tipton in the capacity of interpreter to Tres Piedras. Mr. Tipton told me he was after some of the citizens there with regard to that grant, and that he was after the truth in regard to that grant, and asked me if I knew anybody there who could give him some information. I told him I knew several—Serafin Pena and other old men at Tres Piedras—and as we were going we met Antonio Torres, and he told Mr. Tipton—I was interpreter for him—that the Loma Tio Ortiz was near Buckman's mill, in Las Tucas.
Q. Did he tell him how he knew that was the Tio Ortiz Hill?
A. He knew. He was born and lived near the Petaca grant. In the early days, when he was a boy, he was herding herds of sheep there; that Serafin Pena and others had told him that the Loma Tio Ortiz was there near the mill.

Cross-examination by Mr. BARTLETT:

Q. What is your business?
A. Interpreter, guide, and soldier; spent a good portion of my life in the army.
Q. Serafin Pena told you last Tuesday, did he, that he was going down to testify about this grant for his people, and that the grant had never been settled until after the Americans come to this country?
A. He didn't tell me that as a witness; in a private conversation as man and man.
Q. Private conversation between man and man?
A. Yes; as man to man.
Q. How did he happen to tell you this when he was coming down here to testify to something different?
A. That's for you to understand. He come to me and gave me that information.
Q. Were you not then employed by the Government in this Petaca case?
A. No, sir.
Q. When were you employed in this case?
A. Day before yesterday.
81 Q. Who employed you as an interpreter for Mr. Tipton?
A. I didn't go for the Government. I went just as a private citizen.
Q. Who paid your expenses?
A. I paid my expenses. I interpreted for him and it didn't cost him anything.
Q. You didn't charge him anything? How far is it from Tres Piedras, where you live, to Petaca?
A. About 12 miles.
Q. Whose team did you go there with?

A. I don't know. Mr. Tipton had the team. I went with him.
Q. What time did you leave Tres Piedras?
A. I don't remember; it was early in the morning.
Q. Where did you get dinner?
A. *I* Jesus Maria Lucero's.
Q. Who paid for that?
A. I don't know; I didn't.
Q. Did you get back the same night?
A. No; we went from Lucero's to Buckman's mill.
Q. Did you stay there over night?
A. Yes, sir.
Q. Did you do any interpreting at Buckman's mill?
A. No; we stopped there with a man who could converse in English.
Q. Mr. Tipton speaks English?
A. Pretty good.
Q. Did you stay all night at Buckman's?
A. Not a' Buckman's; stayed at a private house near there.
Q. When did you go back to Tres Piedras?
A. The next day.
Q. And you were not making your expenses on that trip at all?
A. No, sir; not making my expenses. I was stopping with friends there, and when they want to they stop with me.
You interpreted—talked?
A. Of course.
Q. Did Mr. Tipton pay you for your time?
A. Mr. Tipton didn't pay me anything. Nobody paid me anything for that trip.
Q. Is anybody going to pay you for it?
A. No; I wish they would.
Q. Is this the only talk you ever had with Serafin Pena in regard to this grant?
A. That and when I went with Mr. Tipton and talks I had with others in Tres Piedras.
Q. You saw Serafin Pena, did you, at that time?
A. Yes, sir; I talked over the courses of the grant with Serafin Pena.
Q. What did Serafin Pena state at that time?
A. He stated that he knew a good many miracles in regard to that grant, but he was not going to say anything unless he was
82 called on the stand by the Government and testified under oath, and that he would tell the truth when he was put under oath.
Q. And he told miracles when he was not under oath?
A. I don't know.
Q. You say that Torres told you the Tio Ortiz hill was where Buckman's mill is now?
A. Yes, sir; that's what he told me.
Q. You say Mr. Tipton was there?
A. Yes, sir.
Q. Mr. Tipton heard it?
A. He spoke in Spanish and I interpreted it into English to Mr. Tipton.
Q. You say that the Cerrito de la Cruz is near the San Antonio Mountain and is now called the Tio Ortiz hill, do you?

A. I never heard about the Tio Ortiz hill in the neighborhood of that place until about five or six years ago. I never heard of such a hill up there until four or six years ago, and I have been there in the neighborhood all the time.

Q. You have lived at El Rito all your life?

A. Yes, sir; with the exception of a stay in California of a couple of years and a year in Colorado at San Juan in the same county.

Q. You never knew anything about the Petaca grant or its boundaries until you went to Tres Piedras?

A. Never knew anything about them and don't know much now.

Q. You never had any interest in it?

A. No, sir; no more than any other grant in New Mexico. No interest and don't know anything about it.

Witness excused.

W. M. TIPTON, a witness heretofore sworn on behalf of the petitioners, recalled for further examination and introduced as a witness on behalf of the defendants, The United States:

Direct examination by Mr. BURKHART:

By Mr. BARTLETT. In view of the testimony just given, we will withdraw our admission in regard to Mr. Tipton being a Spanish expert.

By Mr. BURKHART. Very well. He has already testified that he understands and speaks Spanish.

Q. Mr. Tipton, did you have a conversation with Antonio Abeytia Torres in the presence of Captain Montoya, who has just testified, in Petaca about the 20th of April of the present year with reference to the Tio Ortiz hill?

A. Yes, sir; I did.

Q. What was that conversation?

A. This man stated in my presence and that of Captain Montoya in answer to questions propounded to him that he was acquainted
83 with the hill known as Tio Ortiz hill; that he had known it from the time that he was a boy; that he became acquainted with it when he was herding stock in that vicinity, and that he learned its name from old men who lived at Petaca at that time, and they told him that it was known as the Tio Ortiz hill; that this hill was situated on the west of the Petaca River and near the sawmill at the place called Las Tusas and below the mill. He stated further that one of the old men from whom he had learned the name of the hill was still living and his name was Serafin Pena.

Cross-examination by Mr. BARTLETT:

Q. Who acted as your interpreter at that time, Mr. Tipton?

A. Captain Montoya carried on the conversation mostly. I spoke to him along towards the end of the conversation.

Q. This conversation carried on in Spanish?

A. Yes, sir; in Spanish.

Q. Captain Montoya asked him the questions in Spanish and he would get his replies in Spanish and would then translate them to you?

A. During the first part of the conversation; yes, sir.

Q. How long did that conversation continue?

A. I think not over ten minutes.

Q. Did you pay Captain Montoya any money for his expenses on that trip?

A. No, sir.

Q. Did you agree to?

A. I did not.

Q. How did you happen to go on this expedition?

A. I was ordered to go by Mr. Reynolds, the United States attorney for this court.

Q. On behalf of the Government?

A. Yes, sir.

Q. That's all.

Witness excused.

CLARENCE KEY, a witness called and sworn on behalf of the defendant, The United States, testified as follows:

Direct examination by Mr. BURKHART:

Q. Look at this paper, Mr. Key, the original Spanish grant papers in this case, and state whether or not you have examined the act of possession therein.

A. I have examined it, sir.

Q. Will you state to the court what changes, if any, have been made in that paper with reference to the east boundary?

A. Without more careful examination with a glass I would not like to say exactly what changes have been made; but I see very
84 clearly that changes have been made, erasions made and insertions made with different ink than the original.

Q. Have you examined that paper under the glass sufficiently well to state whether or not those changes were made with a quill pen or a steel pen?

A. I think they were made with a steel pen.

Q. What experience have you had in the examination and deciphering of this kind of papers?

A. I began examining Spanish and Mexican archives in 1868, and since then I have had varied experience in the surveyor-general's office here and in the General Land Office at Washington.

Q. You are connected with this case for the plaintiffs in the capacity of attorney, are you not?

A. Well, it is difficult for me to answer that. I am generally employed by Mr. Catron to assist him in his cases. I have never particularly examined this case or said anything to him about it, with the exception of once I spoke to him about getting some witnesses. I did not know anything about the case until I examined it the other day.

Q. Well, Mr. Key, you are assisting Mr. Spiess in the trial of this case, aren't you?

A. Yes, sir.

Cross-examination by Mr. BARTLETT:

Q. Mr. Key, I wish you would examine that document under a glass and state what has been changed and what has been added, if anything.

(Witness here examines the document under a glass for several minutes and then says:)

A. I think the word written over here following the word "la," immediately after the word "oriente," is "mesa." The next two words, written as if they were one here, however, "de la," in my opinion has had an addition put to it, so as to make it read "de las." Following that I can't make out and have no idea what the word was, it having been erased and the word "Aguajes" written over it. Following that and joined to the next and following what in the original is "Petaca" is what appears to be an "a," looks something like an "a," and I think was intended for an "a," but really not the form of any letter I ever saw. I think it is intended for an "a," and then follows the word "Petaca."

Q. That purports to give the east boundary of the grant, does it not?

A. The east boundary of the grant as given in the act of possession.

Q. Now, will you be kind enough to read that as it appears altered and then as it would appear unaltered, as far as you can?

A. The line begins "por (on) el (the) oriente (east) la (the) mesa
85 (table-land) de (of) la (the). The next word is erased so you can't see it.

Q. That is the original?

A. The original one. Following on the same line, continuing, "Petaca." I will now read it as it appears: "Por (on) el (the) oriente (east) la (the). I can't say that I can read what follows. There are two marks bearing some resemblance to an "r." The remainder of the word appears to have been altered, "allo."

Q. The next word, then?

A. "De (of) las (the) Aguajes (water pools). I said before that the following letter, which is joined to the word "Petaca," looks like the letter "a," but as it is joined here to the word "Petaca" it makes "Petaca" read "Apetaca."

Redirect examination by Mr. TIPTON (special agent):

Q. What is the gender of the word "Aguajes" in Spanish, Mr. Key?

A. Masculine.

Q. What article should it have before it in the sense in which it occurs?

A. A masculine article.

Q. What is that masculine article?

A. "Los."

Q. What one appears in this document?

A. Feminine article.

Q. What is it?

A. "Las."

Q. The article then appearing before the word "Aguajes" does not agree with it in gender as it should?

A. It does not.

Q. What does "Apetaca" mean, considered as two words?

A. "To Petaca."

Witness excused.

S. L. BACHELOR or S. L. BACHELEOR, sworn as witness on behalf of The United States, the defendant, testified as follows:

Direct examination by Mr. BURKHART:

Q. What is your age and residence?

A. I residence at Tres Piedras.

Q. How long have you lived at Tres Piedras?

A. About twelve years.

Q. Are you acquainted with Frank Chaves, one of the witnesses who testified on the stand here yesterday?

A. Yes, sir; I have known him since 1885.

86 Q. Have you ever had any conversation with him during the last four or five years at Tres Piedras with reference to the Petaca grant? If so, state what they were.

A. Since we have been acquainted he has told me that the northern boundary of the Petaca grant was south of Tres Piedras; he stated it would not take Tres Piedras in.

Q. Did he tell you anything else about it?

A. He afterwards said that the title of the grant was not good because it was not settled in time; later he said he would probably purchase more interests and to try to get a confirmation.

Q. Did he state to you the source of his information as to the settlement of the grant?

A. He stated that his father was one of the old settlers of this settlement.

Q. Did he say where he got his information?

A. It was from a relative; I think it was his father.

Cross-examination by Mr. BARTLETT:

Q. How did you happen to go Tres Piedras, Bachelder?

A. I went up there tie-cutting with Mr. Berry.

Q. Did you have a contract?

A. Mr. Farwell had a contract, and he assigned it over to us.

Q. What Farwell—S. S.?

A. Yes, sir.

Q. Where were those ties to be cut?

A. They were to be cut on the Petaca grant and on the public domain.

Q. Now, as a matter of fact, were they not all cut on the Petaca grant?

A. No, sir; part of them on the Petaca grant and part on the public land; it was supposed at that time to be the Petaca grant, but later on Mr. Farwell admitted it was not.

Q. These ties were being cut by you and Mr. Berry in the vicinity of Tres Piedras?

A. Yes, sir; south.

Q. And you are still engaged in the timber and tie business there, are you not?

A. Yes, sir.

Q. On what is considered to be the Petaca grant?

A. We are cutting some for Mr. Buckman that is assumed to be on the grant, but we are cutting mostly on the public land.

Q. How do you arrive at a division between the Petaca and the public land?

Mr. BURKHART. If your honor please, that is not proper cross-examination. I only examined this witness with reference to the conversation had between Frank A. Chavez and himself, and this is not proper cross-examination.

Mr. BARTLETT. I desire to show by this witness his interests with the Government, the manner of his cutting ties and timber, and
87 it will show subsequently that his interests there are adverse to the claimant in this case.

Mr. BURKHART. Ask him that if you want to; we have no objection.

By the COURT. The objection will be sustained.

Q. When you went there, to Tres Piedras, were all the boundaries of this grant pointed out to you—were they not pointed out to you by Mr. Farwell as claimed by him?

Mr. BURKHART. Objected to as immaterial.

By the COURT. The objection will be sustained.

Q. You never knew anything about this grant until you went to Tres Piedras in 1885?

A. No, sir.

Q. Have you any interest now in this grant adverse to the petitioners?

A. I own property in Tres Piedras. I don't know whether that would be against the grant or not.

Q. Is that all you own?

A. That is all the property, but I have some buildings in Tres Piedras.

Witness excused.

GEORGE B. BERRY, a witness called and sworn on behalf of the defendant, the United States, testified as follows:

Direct examination by Mr. BURKHART:

Q. Will you please state your name and residence.

A. George B. Berry; Tres Piedras, New Mexico.

Q. How long have you lived in Tres Piedras?

A. Eleven years.

Q. Where did you live before that?

A. In Conejos County.

Q. In Colorado?

A. Colorado.

Q. What business were you engaged in in Conejos?

A. I was dealing in live stock and in freighting.

Q. Did you have a livery stable?

A. No, sir; not in Conejos.

Q. How long did you live in Conejos?

A. About four years, I think.

Q. Did you know Mr. Farwell?

A. Yes, sir.

Q. The old gentleman who bought the Petaca grant?

A. Yes, sir.

Q. When did you first know him?

A. In the spring or summer of 1884.

Q. How did you become acquainted with him?

88 A. The first time when I became acquainted with him we kept a hotel at Conejos—at Antonito—and Mr. Farwell, he came there sick, and I got acquainted with him at that time; he was staying at our house.

Q. Did you drive Mr. Farwell to and over what is claimed as the Petaca grant?

A. Yes, sir.

Q. State the circumstances of that drive and where he wanted you to take him—all about it.

A. Well, Mr. Farwell came there and he was sick, and I got acquainted with him. He said he was going down on the Petaca grant, and he asked me if I would drive him there, and I told him I would. He asked me if I knew where the Ortiz hill was. I told him I did not, but that I could find where it was for him. I asked Mr. Juan Trujillo; I had known him for years; he had worked for me, and I asked him where the Tio Ortiz hill was, and he told me that the mountain that was called Kiowa and some other name was the Ortiz hill.

Q. Where is the Kiowa Mountain?

A. Below Las Tusas.

Q. Did you ask anybody else besides Juan Trujillo?

A. I asked two or three other men.

Q. What did they tell you?

A. They stated there were two hills called Tio Ortiz, but I knew that Juan Trujillo would tell where the Tio Ortiz was; he worked for me at that time.

Q. Where did Juan Trujillo live all his lifetime, if you know?

A. In that vicinity.

Q. How old a man was he at that time?

A. About my age.

Q. What is your age?

A. Fifty-four in October.

Q. What hill did you start for on the information that he had given?

A. I started for that hill below Las Tusas.

Cross-examination by Mr. BARTLETT:

Q. You say Juan Trujillo told you that the Ortiz hill was south of Las Tusas?

A. It is below Las Tusas, where he told me. He had a ranch on the Tusas, and I asked him where it was.

Q. Where is he now?

A. I think he is in or about Las Tusas or Tres Piedras; around there, hauling lumber.

Q. Is he alive?

A. Yes, sir; he is.

Q. Now, you say that several people told you that there two Tio Ortiz hills; when Juan Trujillo talked about it was he working for you at that time?

89 A. Yes, sir; he was working for me at that time.

Q. Did Juan Trujillo tell you there two Tio Ortiz hills?

A. Yes.

Q. And where was the other one?

A. I think the head of the Aguage.

Q. You mean near to the San Antonio Mountain? About how far?

A. It is three or four miles. Right here I would like to explain that, gentlemen.

A. Go ahead.

A. When Mr. Farwell asked me where the Tio Ortiz Hill was I told him I didn't know what hill it was. When he got down to the San Antonio Mountain—there is three hills in a line (three small hills)—and Mr. Farwell said, "Which one of the hills was the Tio Ortiz?" A. I said not either. He said they certainly was. So he got out that map of the grant, and he went turning it around, and on this side was the Tio Ortiz Hill on the north corner—the northeast corner of the grant. So Mr. Farwell knew more about it than I did.

Q. And you didn't know anything about it until you talked with Juan Trujillo?

A. No; and he sent me on the wrong road.

Redirect examination by Mr. BURKHART:

Q. Are you in the employ of Mr. Farwell at this time?

A. No, sir.

Q. Have you been during the last eight or nine or ten years?

A. I was working for Mr. Farwell in 1884 & '85.

Q. Were you not superintendent of his mill there for a long time?

A. He hasn't got any mill.

Q. Why did Mr. Farwell insist that one of those hills there near the San Antonio Mountain was the Tio Ortiz Hill?

A. Because he had a map of the grant.

Mr. BARTLETT. We object to that question.

(No ruling.)

Q. Did anybody tell you that that hill that you went to was the Tio Ortiz Hill at the time you started out?

A. No.

Recross-examination by Mr. BARTLETT:

Q. Would you recognize that map if you would see it again?

A. Yes, sir.

Q. Examine that map and see if it was the same one or a copy of it [showing witness a map of this grant].

A. I saw a copy of this; I think so.

Witness excused.

90 Mr. BURKHART. I now introduce in evidence a sketch map filed by claimants to the Petaca grant, filed with the surveyor-general, marked with the figure "2" in red ink and "179" in black ink. (Said document was thereupon marked and is identified in this record as the document marked "2" in red ink and "179" in black ink.)

Also offer in evidence the deposition of Serafin Pena given before the surveyor-general in 1875.

(Said document was thereupon marked "Exhibit B" for the defendant.)

The Government rests. Petitioners rest.

Mr. BARTLETT. This case was tried last June, the three cases being consolidated and tried as No. 153. Mr. Catron and myself represent the

Farwell claim for the entire grant by purchase from the heirs and representatives of Julian Martin and others. Mr. Howard and Mr. Spiess represent fifty-three others who were placed in possession at the time these three original petitioners were placed in possession. There is no conflict whatever between us as to the validity of the grant, its occupancy and boundaries. At the time the testimony was closed in June Mr. Catron asked that the case be continued for the purpose of allowing us to introduce evidence showing from whose custody these original grant papers come into the surveyor-general's office. The contention of the Government was that they come from private hands, and that that fact would mitigate against the validity of the grant, there being erasures, alterations, and so forth in the original grant documents. We have succeeded in finding the testimony that we desired, and we have only one witness on that subject, and we understand, may it please the court, that is the only new evidence we would introduce.

JESUS MARIA LUCERO, being called and sworn on behalf of the petitioners, testified through the medium of the official interpreter as follows:

Mr. BARTLETT:

Q. State your name, age, place of residence, and occupation.

A. Jesus Maria Lucero. I am not certain about my age, but I think I am fifty-eight years old. My residence is at Petaca, N. M., in the county of Rio Arriba; my occupation, farmer.

Q. How long have you lived where you now live?

A. Since the year '65 to this date.

Q. Where were you born, and where did you live until you moved to Servilleta?

A. I was born at Ojo Caliente; I was about 11 or 12 years when I went to live at Servilleta.

Q. Do you know of the Petaca grant or tract of land, and, if so, when did you first know there was such a grant?

A. The first knowledge I had of it was about the year '70 or '71, when some notices were given in order that the grants might be recorded
91 and presented to the surveyor-general. At that time they called some meetings of the people in the place where I lived, inquiring of them whether anybody knew about the whereabouts of the title papers of the Petaca grant. I had no definite information as to the whereabouts of the papers. The people then appointed three commissioners for the purpose of finding out the papers. At the time of this meeting I myself, Pasqual Martinez, and Agustin Ortiz were appointed the commissioners.

Q. Was that appointment in writing?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Will you produce it?

(Witness produces paper.)

A. At that time I told them if they did not make the appointment in writing I might lose all my trouble, and then that paper was written.

Q. Was this paper signed by all the grantees in the grant or their representatives?

A. By their heirs. The names of those who were seeking out for the grant papers are there.

Mr. BARTLETT. I offer this in evidence, with a translation.

(Said document was thereupon marked "Exhibit A" of the adjourned hearing.)

Mr. BURKHART. I object to it as immaterial.

(No ruling.)

Q. Under that authority what did you do?

A. To get the grant papers. I began to write letters to those persons who I knew to be grantees, in order to find out about the papers.

Q. Any more?

A. Afterwards Juan Jesus Barela, deceased, wrote me that the papers belonging to the Petaca grant were in his possession, and then the committee appointed Jose Ysidro Barela to go over and bring the papers from the house of his father; but he would not deliver the papers to the party sent, saying that he would not do so because they might say he was interested and would lose the papers, and they would have to send some other party. Then we appointed Mr. Domingo Archuleta to go over to the house of Jesus Maria Barela and bring the papers, and he brought them to the hands of the committee that had been appointed.

Q. What papers were they?

A. They were the papers of the year '36 of this century.

Q. Would you recognize those papers if you should see them?

A. I think so.

Q. I will show the witness the original grant papers in this case, marked "Exhibit XXX" on the upper right-hand corner, and ask him to examine them and state whether or not that was the paper which he received from Jesus Maria Barela and delivered to the committee.

A. (After closely examining the document for some time.) According to the examination made now I think it is the same grant.

92 Q. Is it the same paper which you received from Barela?

A. I think so.

Q. After you received that paper what did you do with it?

A. Come to consult Mr. Catron, in order to see what we had to do in order to register and record it in the office of the surveyor-general.

Q. Did you, the committee of the people, examine and read that document when you received it from Barela?

A. Yes, sir.

Q. With what care did you read it?

A. We read it at the meetings that we had, and all those who were able to read examined it.

Q. Is that paper now in the same condition as when you received it from Barela?

A. I think so.

Q. Do you know the boundaries of that grant?

(Objected to. Withdrawn.)

Q. I will change the question and ask whether this paper states the boundaries of the grant.

(Objected to. The papers speak for themselves. Objection overruled.)

A. Yes, sir.

Q. Did you learn the boundaries at that time from this paper?

A. Yes, sir.

Q. Had you known of them before or heard of them before you read this paper?

A. We never knew it before, that the objects we knew by those names were the boundaries of this grant. We found that they were the boundaries from this paper.

Q. What was the eastern boundary of the grant was shown by the grant papers?

(Objected to. Sustained.)

Q. What was the eastern boundary there in the grant papers at the time you received it from Barela?

A. The arroyo de las Aguajes.

Q. I will ask you to examine this grant document again where the eastern boundary is given, and state whether or not that boundary appears in that document now as it did when you received it from the hands of Barela.

A. By looking at it now I find no difference in its present state from that when it was given to us. What I believe is that we received it in that same order from the hands of Barela.

Q. How did your commission happen to go to Barela for documents connected with this grant—for what reason?

A. Because we did not know the whereabouts of this grant.

Q. Why did you go to him instead of somebody else?

A. We had already gone to other persons.

93 Q. Was it known that he had been an official of the Government by the people in that vicinity?

(Objected to as leading. Objection overruled.)

A. I did not know myself.

Q. I ask him if it was known there by the old people that he had been an officer of the Mexican Government.

(Objected to as leading. Objection overruled.)

A. I do not know.

Q. Do you know whether or not at the time you received this document from Barela whether he had any interest in this grant or had any claim for lands within it?

A. He had none. He had already committed his interest to his son, Jose Ysidro.

Q. Is this the son whom you have mentioned and to whom Jose Maria Barela would not trust the bringing of this document to the commission?

A. Yes, sir.

Q. Do you know whether Jose Maria Barela was a witness in this claim before the surveyor-general when it was presented in the year' 1875 and 1877?

A. I know he was—himself and Juan Ysidro himself—at the time this grant was recorded in the office of the surveyor-general.

Q. Was this Jesus Jose Ysidro Barela, from whom the commission received that grant paper, the same Jesus Ysidro Barela who testified before the surveyor-general in 1875?

A. Yes, sir.

Cross-examination by Mr. BURKHART:

Q. You are one of the claimants to this grant, are you not?

A. Yes, sir.

Q. You were here when this case was tried last term, weren't you?
A. I was here.
Q. You were here during all the trial, weren't you?
A. When the testimony was taken I was here.
Q. You didn't testify at that time, did you?
A. No, sir; my attorney was not here.
Q. You knew the facts then to which you have now testified, didn't you?
A. Yes, sir; all these papers that I have now produced were brought here at that time in order to be presented if they were necessary.

Redirect examination:

Q. Who was your attorney, if you have more than one, in this case?
A. Mr. Howard; I have no other attorney.

94 Recross-examination:

Q. Did you not discuss this case with Mr. Catron or Mr. Bartlett or Mr. Prince or Mr. Farwell?
(Object to the question as coming within the rule of privileged communications and as immaterial. Objection overruled.)
A. I *skope* nothing to them.
Q. You know Mr. Farwell well?
A. Yes, sir.
Q. You have been under his employ at times, haven't you?
A. In what matters?
Q. Have you been in his employ in any capacity?
A. No, sir.

Redirect examination:

Q. As a matter of fact, you consider your interests in this case rather against Mr. Farwell, don't you?
A. No, sir.
Q. You are claiming in this grant by purchase from a number of settlers up in the Petaca country, are you not?
A. I claim by virtue of the document which has been given me by parties in the same manner as Mr. Farwell does.

Examination by Mr. HOWARD:

Q. Do you recognize the claim of Mr. Farwell to the whole of this grant to be valid?
A. I believe that the claim is valid.
Q. Don't you claim to have some interest in that grant?
A. Yes, sir.
Q. Have you sold your interest to Mr. Farwell?
A. No, sir.
Q. Are there not many people living in the Petaca who have interests that they have not sold to Mr. Farwell?
A. I think that there are many people who have not sold their interests.
Mr. BARTLETT. This, may it please the court, is the testimony that we had hoped to get and which we have secured, and, as I stated, we don't care to go into the original case, and we now rest, except as to rebuttal to such testimony as the Government may offer.
Mr. BURKHART. I understand that your case is closed in chief.
Mr. BARTLETT. Yes, sir.

Mr. HOWARD. With the exception that I would like to file some deeds with the record, which I do not find among the papers here now. They were here and filed with the clerk with the original papers, but now they appear to be missing. I ask leave to file them, to introduce them in evidence when they are found, or to file others. I will file an abstract of all these deeds.

(Objection made to all these deeds as incompetent, irrelevant,
95 and not purporting to convey interests in this grant, and not connected in any way with any of the grantees.)

ON BEHALF OF THE UNITED STATES.

ANTONIO MARIA ORTEGA, a witness called and sworn on behalf of the United States, testified through the medium of the official interpreter as follows:

Direct examination by Mr. BURKHART:

Q. What is your name, age, and residence?

A. Antonio M. Ortega; I live at Vallecitos; I lack two months of 48 years.

Q. Where were you born, Mr. Ortega, and where have you lived all your life?

A. I was born at the junction of the rivers Petaca and Vallecitos, and I lived there until the year '78, and from there I went to live at the Cañon de Vallecitos.

Q. How far is the place where you were born from the present town of Petaca?

A. About 10 or 12 miles.

Q. Do you know the Petaca tract of land, as claimed?

A. Yes, sir.

Q. Do you know the hill known as Loma de Tio Ortiz?

A. Yes, sir.

Q. When did you first know that hill by that name?

A. About the year '63 or '64.

Q. How did you first become acquainted with it?

A. I was sent over there by my father to bring some sheep that he had bought to the ranch of Jose Demacio Giron, now deceased.

Q. Where did he live with reference to the hill?

A. Giron lived at Vallecitos.

Q. Where was his ranch with respect to that hill?

A. At the Valle de los Tucas; at the Loma de Tio Ortiz.

Q. How did you come to know the Loma de Tio Ortiz?

A. Because the ranch was right at the hill.

Q. Had you ever been to the ranch before?

A. No, sir; that was the first time.

Q. Where did your father send you?

A. To the valley of the Tucas, and the ranch was right up to the hill Loma de Tio Ortiz.

Q. Who told you that was the Loma de Tio Ortiz where you went?

A. My father told me that there was a hill by that name there.

Q. Anyone else? How did you know when you got to the Loma de Tio Ortiz?

A. I went by the trail that started at Vallecitos.

Q. Have you ever heard from any other source that the hill to which you went on that day was the Loma de Tio Ortiz?

96 A. From the said Demacio Giron, deceased, and other old persons. I have been very seldom at that place, but I have been told that was the hill.

Q. How many times have you been to that hill?

A. Many times since the establishment of the mill there by Mr. Buckman. I have been working there.

Q. Where is this hill with reference to the old site of Buckman's mill?

A. West.

Q. How far from the town of Petaca?

A. About 10 or 12 miles to the north.

Q. Do you know of any other hill in that neighborhood known as the Loma de Tio Ortiz?

A. I have not known it at all.

Q. What do you mean by that?

A. That since I have been going to those places I have not known any other place by the name of Tio Ortiz.

Q. Have you heard of any other place lately?

A. Yes, sir.

Q. When did you first hear of another place and where is it?

A. Since the year '77, '78, or '79, I don't remember which, I have heard of another place called Loma de Tio Ortiz, which I had always known as the Laguna.

Q. Where is that?

A. I have not seen any hill or loma at that place—in the vicinity of the Laguna.

Q. Were you or not out with the surveyors who made a survey of the Petaca grant?

A. I was not.

Q. Do you know when that grant was surveyed?

A. I think it was in '77, or '78, or '79.

Q. When did you first hear of this second loma of Tio Ortiz with reference to the time of the survey—was it before or after?

A. At the time the survey was made.

Q. How is the hill that you have spoken of as near the site of Buckman's old mill known amongst the people of that community?

A. Commonly known as the Lomita of Tio Ortiz.

Q. Is there any other name for that hill amongst the people in that vicinity?

A. No, sir.

Q. Is it generally known by that name or not by the people in that neighborhood?

A. Yes, sir.

Q. Do you know a hill called the Cerrito de la Cruz?

A. Yes, sir.

Q. How long have you known it?

A. Since the year '67 or '68.

Q. Where is that with reference to the San Antonio Mountain?

A. The San Antonio Mountain is to the north. The Cerrito is to the south.

97 Q. Is there any other hill in that neighborhood which has a distinctive name?

A. Yes.

Q. What other hill?

A. The Cerrito Colorado below the Laguna of Tio Ortiz.

Q. Is there any other hill?

A. No, sir.

Q. Are there two hills at the place called Cerrito de la Cruz?

A. There are, but both of them go by the same name.

Q. What stream runs by the town of Petaca?

A. You mean to the west?

Q. Right through Petaca.

A. The Rio de las Yucas, the same river that goes from the valley of the Tucas to the north.

Q. What is the name of the stream at Petaca?

A. It is the Rio Petaca there and as far as the Cañon de las Tablas.

Q. And above there what is the same stream called?

A. Rio de las Tucas.

Q. And below the Petaca what is the same stream called?

A. The Rio de la Petaca.

Q. How far below Petaca is it known as that?

A. As far as the bluff, where the road going to Cevilleta passes. I have known the river by that name—Rio de la Petaca—as far as the road going to Cevilleta.

Q. Has that place a name?

A. Yes, sir; the Little Ford.

Q. South of that what is the name of the stream?

A. Towards that place, as it bears down towards Cevilleta, it is called Cevilleta Creek.

Q. South of Cevilleta what is the name of the stream?

A. Quimalazorra.

Q. And south of Quimalazorra what is the name of the stream?

A. At that place it empties into the Rio Ojo Caliente.

Q. How far is Las Tucas above the town of Petaca?

A. About six or seven miles.

Q. What is the name of the Rio de la Petaca? How is it known north of Buckman's mill?

A. Rio de las Tucas.

Q. How long have you known it by that name?

A. Since the time that I stated that I went to the valley of the Tucas, in the year '62, '63, or '64.

Q. How is it known amongst the people in that vicinity north of Buckman's mill?

A. As the Rio de las Tucas.

No cross-examination.

98 JOSE ENCARNACION JARAMILLO, a witness called and sworn on behalf of the United States, testified through the medium of the official interpreter as follows:

By Mr. BURKHART:

Q. What is your name, age, and residence?

A. Jose Encarnacion Jaramillo; I am 52 years old; I live at Los Ancones.

Q. How far do you live from the place called La Petaca?

A. About 10 or 11 miles.

Q. How long have you lived there?

A. Since I was born.

Q. How frequently, if at all, have you been through the*y* valley of the Petaca?

A. In what manner?

Q. Passing through. Are you acquainted with the valley or not?

A. Yes, sir.

Q. How long have you been acquainted wi'h it?

A. Since I began to travel about on the roads.

Q. Have you ever heard of a loma in that vicinity called the Loma de Tio Ortiz?

A. Yes, sir.

Q. When did you first hear of it?

A. When I was a sheep herder up to that place.

Q. About how long ago?

A. Many years ago; I was young then.

Q. Who told you where the Loma de Tio Ortiz was?

A. A man by the name of Agustin Ortiz, who is now dead.

Q. Who was he?

A. He was a herder of sheep, like myself.

Q. Where is the hill which he pointed out to you as the Loma de Tio Ortiz, with reference to the old site of Buckman's mill?

A. It is somewhat to the east.

Q. How far from it, about?

A. Very near; about a quarter of a mile.

Q. In what direction is Buckman's mill from the hill pointed out to you as the Loma de Tio Ortiz?

A. It is towards the north, between the north and the east.

Q. Do you know the name of the stream which at Petaca is called the Rio de la Petaca, north of Buckman's mill?

A. Las Tucas.

Q. How long have you known it by that name—Las Tucas?

A. Always.

Cross-examination by Mr. BARTLETT:

Q. Was this man Agustin Ortiz older or younger than you?

A. He was older.

Q. How much older?

A. I do not know. He was much older than I was.

99 Q. Did he have a sheep camp and ranches by that hill?

A. Yes, sir.

Q. For how many years had he had that camp there?
A. I do not know.
Q. In what year was it, about, when he told you that this place that you have described was called the Tio Ortiz hill?
A. I do not remember.
Q. About?
A. I do not know.
Q. Was it before the war of the rebellion in the United States or afterwards?
A. I think it was afterwards; I was still a young man.
Q. Was he married at that time?
A. No, sir.
Q. Do you know whether this hill was called or named after Agustin Ortiz, or what gave it that name?
A. I do not know anything else, except that he told me that it was the Loma de Tio Ortiz.
Q. He didn't tell you why it was called that, did he?
A. No, sir.
Q. Do you know of any other hill by that name in that vicinity?
A. No, sir.
Q. Do you know the San Antonio mountain north of that?
A. Yes, sir
Q. Do you know of any mountains or hills near the San Antonio mountain?
A. Yes, sir.
Q. What are their names?
A. I know the Cerrito de la Cruz and the Cerro Colorado.
Q. Is that all?
A. Yes, sir; I know those two hills by those names.

By Mr. HOWARD:

Q. Haven't you ever heard of any hill up near the Cerro Colorado called the Loma Tio Ortiz?
A. No, sir.
Q. Never heard of it?
A. I have heard it said at these times, but I did not know the place.
Q. Do you know of any hill up near the San Antonio mountain with springs of water at the foot?
A. No, sir.
Q. When Ortiz told you the name of the Tio Ortiz hill are you certain whether he called the *the* "Loma de Tio Ortiz" or the "Lomita de Ortiz?"
A. He told me it was the Loma de Tio Ortiz.

100 JUAN ANTONIO PENA, a witness called and sworn on behalf of the United States, testified through the medium of the official interpreter as follows:

By Mr. BURKHART:

Q. What is your name, age, and residence?
A. My name is Juan Antonio Pena; I live at Conejos, Colorado; I am sixty-six years old.

Q. Where were you born?
A. At Ojo Caliente.
Q. How long did you live there?
A. I lived there a little more than fife years when I was young.
Q. Where did you go from Ojo Caliente?
A. Servilleta.
Q. What was your father's name?
A. Rafael Pena.
Q. When did you leave Servilleta?
A. In the year '54.
Q. Are you acquainted with the tract of land called Petaca?
A. Yes.
Q. When did you first know it?
A. The first time I knew it was in the year '58.
Q. How did you come to go there?
A. They went to settle that place or partition the lands of the settlers.
Q. In what year was that?
A. In '48.
Q. Didn't you say a minute ago in 1858?
A. I make a mistake.
Q. When you first went there in 1848 was there anybody living at Petaca?
A. No.
Q. Were there any evidences or not of cultivation or habitation previous to that time?
A. Nos, sir.
Q. How did you come go *go* there in 1848?
A. They went to partition those lands, and I went with my father also.
Q. Who went to partition the lands?
A. Bernardo, deceased now; Don Jose Vicente Jaramillo, now deceased also.
Q. Who were they and what official positions did they hold?
A. Don*a* Bernardo was a retired alcalde, and Don Vicente Jaramillo was the actual alcalde at the time of the partition.
Q. Were there or not acequias at Petaca at that time?
A. No, sir.
Q. When did your father die, if he is dead?
A. In the year '53.
Q. Look at that paper, Mr. Pena, and state if you have ever seen it before (showing witness paper not identified).
101 A. I have seen that. I do not know how to read or write, but I think that the paper I have is the partition of the Petaca.
Q. When did you first see that paper?
A. In the year my father died.
Q. How did you come to see it?
A. My father left me all the papers that he had; all the obligatio' and the writings.
Q. Was this or not amongst your father's papers (showing same paper marked "Exhibit C")?
A. Yes, sir; it was there. I found it there.

Q. Where has it been since that time?
A. After my father had it?
Q. Since your father's dea'h where has it been?
A. In my hands—in my possession.
Q. Did you or not ever hear, from your father or anyone else, of a grant of the Petaca made in 1836?
A. No, sir.
Q. When was the first time you ever heard of the grant of 1836?
A. When I heard about it was when these men began to make claims for it.
Q. Have you ever seen this paper before, Mr. Pena (showing witness another paper)?
A. Yes, sir.
Q. What is it?
A. That is the partition made by my father at the settlement of the town of Petaca, when he gave 10 varas to each of the persons for a house.
Mr. BURKHART. This is Exhibit D.
Q. Where did you get that paper?
A. From my father.
Q. Where has it been since the death of your father?
A. In my possession.
Q. Did your father hold any official position—you say this destribution was made by him of the ho'se lots?
A. My father was judge there.
Q. When partition was made in 1848 was there any mention made or not of the boundaries of the Petaca grant—the outboundaries?
A. Yes, sir.
Q. What were they?
A. They placed stakes at the corners of the land which belonged to each particular party.
Q. I am speaking of the outboundaries of the place called Petaca. I know that boundaries were given to each particular individual, but were there boundaries given to the whole community?
A. Yes, sir.
Q. Where were they?
A. They were given the watering places—the commons there.

Mr. BURKHART. I offer in evidence the paper identified by Mr.
102 Pena (Exhibit C of the ad'ourned hearing), which appears to be a copy of a grant by the prefect of Rio Arriba County, dated the 27th day of March, 1848, for destribution of lands under that grant.

Mr. BARTLETT. Object to it for the reason that it is not an original and is not shown to be a perfect copy, and, further, it is not shown that he had authority to make a grant at any time, and at that time, March, 1848, he had no authority to assume to make a partition or make a grant to any person, and, further, as incompetent, irrelevant, and immaterial.
(Admitted subject to the objection.)

Mr. BURKHART. We don't offer it as a grant, we offer it as showing there was no possession of the grant in 1836.

Mr. BARTLETT. For that purpose it is imm'terial also, because this prefect assumed to make a partition of lands in March, 1848, and there is no evidence that there was no occupancy of the lands at that time.

Mr. BURKHART. I offer in evidence the second paper identified by witness Pena and marked "Exhibit D" (of the adjourned hearin') for identification, being a partition of house lots in the town of Petaca of Rafael Pena, and Mr. Jesus Maria Barela, in whose custody the grant of 1836 was found. This is dated June 10th, 1848.

Mr. BARTLETT. I wish the same objection entered as that made to Exhibit C.

(Admitted subject to the objection.)

Q. Who were put in possession in 1848, when you were there? Give the names of all you can remember.

A. On the upper side of the town, Mariano Pena, Rafael Pena, Bartolo Valdez, Jose Francisco Valdez, Juan Manuel Olguin, Jesus Maria Barela, Tomas de Aquiano Mancheco, Agustin Ortiz, Gabriel Vigil, Serafin Pena, Juam Miguel Maestas, Carlos Torres, Manuel Antonio Torres, Jose Maria Torres, Pedro de Herrera, Jose Gaoge Ruival, Desederio Valdes, Miguel Alire, Ravael Chaves, Pedro Antonio Chaves, Nerio Valdes, and between Nerio Valdez and Juan Ignacio Valdez there was fifty varas open space for commons, watering places, and so forth; Juan Antonio Valdez, Jose Vincente Jaramillo, Felip Jaques, Nepomoceno Trujillo. Those are the names that I remember now.

Recess taken until 2 o'clock p. m.

AT 2 O'CLOCK P. M.

Witness JUAN ANTONIO PENA continuing.

Q. Mr. Pena, you name' several persons who were put in possession in 1848 by the alcalde and your father. How many of those persons are now living, to your knowledge?

A. I do not remember how many—Juan Miguel Meastas and, maybe, Serafin Pena.

Q. Is Serafin Pena any relative of yours?

A. Yes, sir.

103 Q. What is his relationship?

A. Second cousin.

Q. You names Jesus Maria Barela as one of the persons. Did you know him?

A. Yes, sir.

Q. Where did he live?

A. Ojo Caliente.

Q. Did you know Jesus Maria Barela—any other, if there was any other?

A. No, sir.

Q. When was this ditch taken out at Petaca?

A. In the year '48, in the month of March.

Q. How do you know that?

A. Because the papers so recite that it was done there.

Q. What do you know about it yourself?

A. I know of my own personal knowledge, because I helped my father to dig his portion of the ditch.

Q. Did your father ever speak to you about the grant of 1836?

A. Yes, sir.

Q. What did he say about it?

(Object to the question as being hearsay. Objection overruled.)

A. That the grant was made in the year 1836.
Q. Did he say anything else about it?
A. Nothing.
Q. Did he say the people went into possession in 1836?
(Objected to as leading. Objection sustained.)
Q. What did he say, if anything, with reference to the people going into possession under this grant?
(Objected to as leading. Objection overruled.)
A. He said that there had been a grant there in 1836, but that it was not settled because the Indians were killing always dozens of people at Servilleta.
Q. Did you ever have any conversation with Mr. Frank A. Chaves, of Conejos, Colorado, with reference to this grant?
A. Yes, sir.
Q. What was that conversation?
A. The conversation—had with me *with*—he was asking me if I had th' grant under which the Petaca was settled.
Q. Where was that?
A. At Conejos.
Q. What did you tell him?
A. I told him that I did not have it.
Q. Why did you tell him that?
A. Because at that time I had seen the grant already, but then the grant was lost. My wife had taken the grant papers and hidden them in the mat'rass.
Q. When was that?
A. I think it was after the year '40. I think the following
104 year the man asked for this. I do not know—I do not remember the time he asked me; some time after '54.
Q. When did you have the conversation with him?
A. It was about that time; after Conejos was settled. It was abo' four or five years after the year '54.
Q. Don' you know a hill in that country called the Cerrito de la Cruz?
A Yes, sir.
Q. Where is that?
A. It is near the mountain called the Cerro San Antonio, with distinctive names.
Q. How long have you known this Cerrito de la Cruz?
A. Since the year '50.
Q. Did you ever hear of the hill called the Loma de Tio Ortiz, in that neighborhood?
A. No, sir. I heard it called so after the survey was made. I did not hear it called by that name before that time.
Q. How long have you lived at Conejos?
A. 20 years.
Q. How far is this Cerrito de la Cruz from Conejos?
A. I think about fifteen miles.
Q. In which direction is this hill from Conejos?
A. Towards the direction of the Loma of Tio Ortiz.
Q. Mr. Pena, how long have you known the hill that you now call the Loma de Tio Ortiz by that name?
A. Since this survey was made I have heard it called by that name.

Cross-examination by Mr. BARTLETT:

Q. In what direction did you say this Tio Ortiz hill that you were speaking of was from Conejos?

A. About fifteen miles.

Q. In which direction—north, south, east, or west?

A. From the Cerrito de la Cruz the San Antonio is in the direction of the sunset.

Q. What is called, then, the Tio Ortiz hill now is a little west of the San Antonio mountain?

A. Yes, sir; about three miles.

Q. Did you ever hear of any other Tio Ortiz Loma in that vicinity?

A. No, sir.

Q. What was this hill that you speak of as now being called the Tio Ortiz Loma called before this survey?

A. I do not know what the name of it was before. I did not know the place.

Q. Have you ever been there?

A. No, sir.

Q. How long did your wife have this paper that you have presented here now in her possession?

105 A. I do not remember. I think she had it three or four years, because we would look for it among our papers and we would not find it, and when the occasion presenting itself for settling up these matters she brought out the papers and did not even remember that she had them.

Q. How did she happen to get this paper?

A. She took it from the place where I had it safely kept, and, I suppose, placed it in the mattress for greater safety.

Q. When you told Frank Chaves you didn't have it you thought it was gone, didn't you?

A. Yes, sir.

Q. Then it has not been in your possession all the time since you got it from your father's papers?

A. It has been in my possession since the time I took it from the papers of my father.

Q. How old were you in 1848?

A. I don't understand your question.

Q. Repeat the question to him.

A. I don't remember.

Q. How old were you when your father partitioned this land under this paper that you have?

A. 18 years.

Q. Did you live at Petaca?

A. Yes, sir; I lived at Petaca.

Q. When did you live at Petaca?

A. Since the time it was settled, in '58, when I went to Conejos.

Q. '58; that was the time it was settled, was it?

A. No; in '48.

Q. Did he live there then?

A. Yes, sir.

Q. Until he moved to Servilleta. How long was that; how many yea'?

A. I think I stated a while ago that I lived in Servilleta before I went to Conejos.

Q. I am now asking you how long you stayed in *in* Petaca until you moved to Servilleta?

A. About 8 or 9 years.

Q. Have you been to Petaca since to live?

A. No, sir; not to live.

Q. How many times have you visited there?

A. Many times.

Q. Do you claim any lands within this Petaca grant?

A. No, sir: I sold my father's interests.

Q. How long ago?

A. Since the year '48, when I went to Conejos.

Q. To whom did you sell?

A. I sold to various persons in portions of fifty varas.

Q. These were lands that were partitioned under this paper that you have here—that were sold?

106 A. The property of my father, yes; that was a portion of that I so sold.

Q. Did not many of the former inhabitants of Pecata live at Servilleta until 1848, at the time this partition was made?

A. Yes; they lived—all those persons who are in that list—they lived there.

Q. You have seen the grant of 1836, have you not?

A. No, sir.

Q. Do you know the names of any persons who claimed under that grant.

A. No, sir; I have not seen it. I have not known any of the persons included in that grant.

Q. You gave the names of a number of allotte's under this partition of 1848?

A. Yes, sir.

Q. I will ask you as I read the names to answer whether each one of these names that I read was included in that partition. Miguel Trujillo?

A. Yes, sir.

Q. Juan de Jesus Olguin?

A. I did not know him.

Q. Lorenzo Griego?

A. I did not know him.

Q. Francisco Valdez?

A. I knew him.

Q. Was he under this partition?

A. I think he was in '36.

Q. I am talking about these names being in the partition in 1848?

A. They were not.

Q. Who was not?

A. In the partition of 1848 there were none of them.

Q. None of what?

A. None of those that you have asked.

Q. Juen de Jesus Vigil?
A. I did not know him.
Q. Joaquin Martin?
A. I did not know him.
Q. Jesus Maria Barela?
A. He was.
Q. Jose Antonio Lucero?
A. He was also.
Q. Jose Garbriel Vigil?
A. He was also.
Q. Juan de Jesus Jaques?
A. I did not know him.
Q. Juan de los Reyes Sana?
A. I did not know him.
Q. Carlos Torres?
A. He was.
Q. Antonio Feliciano Martin?
A. I did not know him.
107 Q. Jose Bernardo Torres?
A. I think I did not know him.
Benito Martin?
A. I did not know him.
Q. Felipe Jaques?
A. He was.
Q. Eusebio Chaves?
A. I did not know him.
Q. Antonio Jose Martin?
A. I did not know him.
Q. Antonio Jose Chaves?
A. He was.
Q. Sabino Chaves?
A. I did not know him.
Q. Antonio Martin?
A. I did not know him.
Q. Francisco Antonio Atencio?
A. I did not know him.
Q. Jose Julian Martin?
A. I did not know him.
Q. Jose Julian Sanchez?
A. I did not know him.
Amador Sanchez?
A. I did not know him.
Q. Jose Antonio Roibal?
A. I did not know him.
Q. Juan Antonio Chaves?
A. I did not know him.
Q. Antonio Trujillo?
A. I did not know him.
Q. Jose Trujillo?
A. I did not know him.

Q. Jose Maria Jaquez?
A. I know him, but I did not see him there.
Q. Mariano Pena?
A. Yes, sir; he was there.
Q. Eluterio Ortiz?
A. Maybe you refer to Agustin Ortiz?
Q. Eluterio?
A. I did not see him there.
Q. Jose Francisco Lucero?
A. I did not know him.
Q. Jose Antonio Lucero?
Q. I knew him.
Q. Was he in this partition?
A. He was in the partition of 1836; he was not in this other one.
Q. I am not talking about the partition of 1836.
Q. Which have you been talking about here, the partition of 1836 or 1848?

Q. I have been talking about the partition of 1836. Q. You
108 testified a while ago you didn't know anything about the grant of 1836.

A. I testified I didn't know anything. You have been asking me the names of the parties of the grant of '36 that I knew and I have been telling you.
Q. How did you know these men were in the grant of 1836 that have been named?
A. Because you were asking me if I knew them.
Q. That is a mistake of the witness. If you will please put the first question to him again I will [obliterated] partition of 1848 was Miguel Trujill' included?
A. No, sir.
Q. Was Juan de Jesus Olguin?
A. No, sir.
Q. Was Lorenzo Griego in that partition of 1848?
A. No, sir.
Q. Was Francisco Valdez?
A. Yes; he was.
Q. He was in the partition of 1848?
A. Yes.
Q. Was Francisco Vigil?
A. No, sir.
Q. Was Juan de Jesus Vigil?
A. No, sir.
Q. Was Juoquin Martin?
A. No, sir.
Q. Was Jesus Maria Barela?
A. He was.
Q. Jose Antonio Lucero?
A. Also.
Q. Gabriel Vigil?
A. Also.
Q. Was Juan de Jesus Jaquez?

A. No, sir.
Q. Juan de los Reyes Sena?
A. No, sir.
Q. Carlos Torres?
A. Yes, sir; he was.
Q. Ask him if he was in the partition of 1848?
A. Yes, sir.
Q. Was Antonio Feliciano Martin?
A. No, sir.
Q. Jose Bernardo Torres?
A. No, sir.
Q. Was Benito Martin?
A. No, sir.
Q. Was Felipe Jaquez?
A. He was.
Q. Was Eusebio Chaves?
A. No, sir.
Q. Was Antonio Jose Martin?
109 A. No, sir.
Q. Was Antonio Jose Chaves?
A. He was.
Q. Was Sabino Chaves?
A. He was not.
Q. Was Antonio Martin?
A. No, sir.
Q. Was Francisco Antonio Atencio?
A. No, sir.
Q. Was Jose Julian Martin?
A. No, sir.
Q. Was Jose Julian Sanches?
A. No, sir.
Q. Was Amador Sanchez?
A. He was not.
Q. Was Jose Antonio Roibal?
A. No, sir.
Q. Was Jose Antonio Chaves?
A. He was not.
Q. Was Jose Trujillo?
A. No, sir.
Q. Was Antonio Trujillo?
A. No, sir.
Q. Was Jose Maria Jaques?
A. No, sir.
Q. Was Mariano Pena?
A. Yes, sir.
Q. Was Jose Francisco Lucero?
A. No, sir.
Q. Was Eluterio Ortiz?
A. No, sir.
Q. Was Jose Antonio Lucero?
A. He was.

Q. Did all these men whom you have named, with the others whom you mentioned this morning, go upon the lands of the Petaca and remain there culticating the land under allotments?

A. Those that I stated this morning and those that I now state *we* were in possession—yes.

Q. And they have remained in possession ever since?

A. Since that time some of them have sold and gone away from the place.

Q. You stated that the Indians were very hostile and killed a number of people at Servilleta?

A. Yes, sir.

Q. In what year was that?

A. In the year 44; the Indians were hostile yet.

Q. What Indians were they?

A. The Utes and Navajoes.

Q. Do you know as a matter of history that the Indians had driven people from the Petaca at various times to Servilleta and other places?

110 A. Yes.

Q. How many times did that occur, if you know, before 1848?

A. Two times.

Q. In what years did that happen?

A. I do not remember.

Q. Have you been told by your father or anyone else?

A. No, sir.

Q. How did you know who the grantees in the grant of 1836 were?

A. Because you have been asking me whether I knew them or not.

Q. You state that the names that I have read were in the partition of 1836?

A. I didn't say anything of the sort.

Q. And I desire to know how you know they were included in that partition?

A. You have been asking me whether I knew those persons; I have stated no.

Q. How many places do you know of called "Petaca" at this time?

A. I only know that place.

Q. Is there not an upper Petaca, called Las Tucas?

A. I do not know it by "Petaca."

Q. You don't know of there being two places called "Petaca?" *Q.* This Petaca that you speak of in 1848, is that the same place known as Petaca now?

A. The Plaza of Petaca—that's the Petaca now.

Q. You stated that there were no houses, ditches, or other evidences of occupation when you went there in 1848?

A. Yes, sir.

Q. Are you certain that that is a fact?

A. Yes, sir.

Q. Were there ruins of houses or acequias?

A. No, sir.

Q. Or traces of any cultivated land?

A. No, sir.

Q. When were you there last, in Petaca?
A. I have been there frequently; I can not tell the last time.
Q. Was it within a year or so?
A. I have been there frequently. I was there lately. I go there to visit and I go there to look after my property.
Q. You have property there?
A. No, sir.
Q. Have you seen Frank Chaves after you told him you didn't have this paper or partition?
A. I see him frequently.
Q. Did you ever tell him that you found that paper or that you had it?
A. No, sir.
Q. Have you ever tried to sell this paper to anybody?
A. No, sir.
111 Q. Did you ever offer it for sale?
A. No, sir.
Q. For what purpose did you keep it?
A. To the end that my father had been a settler, and I had it, and I was not disposed to throw it away.
Q. But you had sold all your interests?
A. I had sold all the property of my father; and not only myself but all of my brothers sold other portions of the property also.

By Mr. BURKHART:

Q. Did any one ever try to buy this paper from you, Mr. Pena?
A. No, sir.
Q. I don't know whether you understood General Bartlett or not, a few moments ago, when he asked you a question; now, I want to 'all your attention to it and see whether you mean what you said. You have testified several times that no person lived u'on the Petaca before 1848?
A. Yes, sir.
Q. Now, Mr. Bartlett asked you whether of not you did not know as a hisotri'al fact that the people of Petaca had been driven away from there several times before 1848?
A. Yes, sir.
Q. What did you mean by that, if no person lived there before 1848?
A. I intended to say that the Indians did not alloe the people to go and settle at that place.
Q. How long before 1848 was it that the people we'e preven'ed from going to Petaca?
A. I guess it had been a long time, because that didn't allow any persons to settle there. Any person who went there was killed.

PONTALEAN PENA, a witness called and sworn on behalf of the United States, testafued through the medium of the official interpreter as follows:

By Mr. BURKHART:

Q. What is your name, age, and residence?
A. My name is Pontaleon Pena; I live at Servilleta; I am sixty-three (63) years of age.

Q. How long have you lived at Servilleta?
A. I do not know. I was born at Ojo Caliente.
Q. How old were you when you went to Servilleta, about?
A. I do not remember; I was quite little.
Q. You have lived in Servilleta since you were quite little, then?
A. Yes.
Q. Do you know a tract called the Petaca?
A. Yes, sir.
Q. When was the first time you went there?
A. In the year 1848.
Q. Under what circumstances did you go, the first time?
A. When they were making the partition there.
112 Q. Were there or not houses or acequias at that time in Petaca?
A. No, sir.
Q. Were there or not any signs of farming—houses, cultivation, or ac'quias?
A. No.
Q. Did you ever hear anything about the grant of 1836 from the old people or your father?
A. No, sir.
Q. Your father never mentioned the grant to you?
A. No, sir.
Q. Have you ever seen that paper before [showing witness Exhibit C]?
Q. I do not know how to read, but that paper was in the possession of my father.
Q. How do you know that?
Q. Because when my father died the papers remained in the possession of my mother, and when my mother died they remained in the possession of my brother.
Q. What brother?
A. Juan Antonio Pena.

Cross-examination by Mr. BARTLETT:

Q. When did your father die?
A. I do not remember.
Q. Was it before the American war with the Mexicans?
A. No, sir.
Q. How long after your father died did your mother die?
A. I do not remember.
Q. About how many years?
A. I cannot remember, because I am not certain about the date.
Q. How does it happen that you can remember the date of 1848 so well and cannot remember when either of your parents died?
A. I remember that because it was stated in these papers.
Q. Papers make more impression your mind than the death of your parents?
A. I did not know because I did not know how to read.
Q. How old were you when your father died?
A. I cannot know.

Q. How old were you when your mother died?
A. I do not know.
Q. Do you know who took possession of this tract of Petaca under the partition of 1848?
A. I know some persons.
Q. Was your father dead then?
A. No, sir.

113 Redirect examination by Mr. BURKHART:

Q. Mention some of the persons who were present when that partition was made.
A. In the first place, Mariano Pena, who is dead; that was my father. Bartolo Valdez, Agustin Ortiz, Jesus Maria Barela, Luis Duran, Agustin Ortiz, Chato Gabriel Vigil, Juan Miguel Martin, Serafin Pena, Carlos Torres, Manuel Antonio Torres, Jose Maria Torres, Jose Gorge Roibal, Desederio Valdez, Miguel Alire, Rafael Chaves, Quirino Trujillo. I do not remember the others.

By Mr. BARTLETT:

Q. How old was Agustin Ortiz at that time?
A. I do not know.
Q. Was he an old man or a young man?
A. He was young.
Q. How old were you at that time?
A. At that time I was fifteen.

CASIMIRO CHACON, sworn as a witness on behalf of the United States, testified through the medium of the official interpreter as follows:

By Mr. BURKHART:

Q. What is your name, age, a'd residence?
A. Casimiro Chacon; I live at Cañon Vallecito; I am sixty-five years.
Q. How long have you lived in Vallecito?
A. About twenty-one years.
Q. Where did you live before that?
A. I lived here at Cueva; also at Llanito.
Q. In what county are they?
A. They are in the county of Rio Arriba.
Q. Do you know the place called Petaca?
A. Yes, sir.
Q. How long have you known it?
A. Since I come to the age of reason I already heard it called by the name of Petaca.
Q. When did you first go there?
A. I do not remember the year when I went to that place first.
Q. How old were you, about?
A. I was very young.
Q. Do you know in the neighborhood of Petaca a place or hill called the Loma de Tio Ortiz?
A. Yes. sir.
Q. How long have you known it by the name of Loma de Tio Orti z
A. I have known it by that name for fifteen years.

Q. Were you a young man or an old man when you first heard it called Tio Ortiz?

114 A. I was already a man.

Q. Where is the Loma de Tio Ortiz with reference to Buckman's mill?

A. It is towards the direction of the hills from the mill of Buckman.

Q. From whom did you hear the name of Tio Ortiz applied to that hill?

A. I heard it from many people. At one time when I was passing by with an uncle of mine by the name of Jose Manuel Martin he told me that was the name given to it.

Q. Where is he now; living or dead?

A. He is dead.

Q. How long has he been dead?

A. I do not remember.

Q. Many years or few years?

A. Few years, but I do not remember the year.

Q. How large were you when he told you this?

A. I was already large.

Q. How is that hill known generally in the community; by what name?

A. Loma de Tio Ortiz.

Q. Do you know another hill in that neighborhood called Loma de Tio Ortiz?

A. After the survey I have heard another hill called that way up near the Laguna.

Q. Do you know a hill called the Cerrito de la Cruz?

A. Yes.

Q. Where is that with reference to the San Antonio Mountain?

A. They are near by each other; the Cerro de San Antonio is in this direction [pointing northeast], and the Cerrito de la Cruz in this direction [pointing southwest].

Q. How long have you known this hill by that name?

A. I have always known it by that name since I first began to hear the name Cerrito de la Cruz.

Q. Is there any other hill with a specific name in the neighborhood of the Cerrito de la Cruz?

A. There is a little red hill below the place.

Q. What is that called?

A. Cerro Colorado.

Q. Any other hill by a distinct name?

A. There are none others. There is a little hill on the north of the Cerrito de la Cruz, but I do not know by what name it is called.

Q. Were the Indians bad up in the neighborhood of Petaca when you were a young man?

A, Yes; the Utes were very hostile at that time.

Q. When did you see the first people living at Petaca?

A. After the year 1854.

Q. Did you ever see any people living there before that time?

A. No, sir.

115 Cross-examination by Mr. BARTLETT:

Q. You state that you had known the place called Petaca since you were at the age of reason, and you were very young. How did that place happen to be called Petaca, if there were no people living there?

A. That is the way it was called. I guess it was always called by that.

Q. But there was nobody living there, you say, until after 1854?

A. Yes, sir.

Q. If anybody had been living there before 1854 you would have known it, wouldn't you?

A. I did not see anybody there and I did not see any shanties.

Q. How do you happen to remember the date 1854?

A. At that time Conejos was settled, in the month of October, and about that time I was going there with a party of men to pasture the place.

Q. Was that the first time you had been at the place of Petaca?

A. I have been after that many times.

Q. Was that the first time?

A. No, sir; before the Indians had become hostile I had gone up to that place once.

Q. Was there anybody there at that time?

A. No, sir.

Q. In what year was that?

A. I do not remember; I was very young.

A. I do not remember; I was very young.

Redirect examination by Mr. BURKHART:

Q. Do you know where the old site of Buckman's mill was?

A. Yes, sir.

Q. What is the name of the stream passing by that place?

A. Rio de las Tucas.

Q. Is that the same stream or not which passes by Petaca?

A. Yes, sir.

Q. At what point with reference to Buckman's mill does the stream take the name of Las Tucas?

A. From the Tucas up it is called Rio de las Tucas.

Q. How far below Buckman's mill is it called Rio de las Tucas?

A. Where the creek of Las Tucas empties into Canoncito I think it is about two miles, more or less; I do not know.

Q. What is the name of the stream after it goes into the cañon?

A. From there down it is cañon and is called the cañon of the Petaca.

Q. What is the stream called?

A. It is called Rio de la Petaca.

Q. What is it called south of Petaca?

A. Servilleta.

116 Mr. BURKHART. I had another witness, but he is not here. I except another witness to be here in the morning. The testimony of the man that I have is entirely corroborative of the witnesses that have already testified, but I will close my case, if your honors please, except that I ask leave to introduce Mr. Tipton later on, if necessary, to testify as to the signature to that paper before the surveyor-general and the

signature of the paper introduced by Mr. Bartlett as being the signature of the same man. I don't know at this time whether I will need him or not.

DESEDERIO ORTIZ, called and sworn as a witness for the petitioners on rebuttal, testified thor'gh the medium of the official interpreter as follows:

Direct examination by Mr. BARTLETT:

Q. State your name, age, and residence.

A. My name is Desederio Ortiz; I am forty-seven years old, and live at Petaca.

Q. How long have you lived there?

A. Since I arrived at the age of knowing anything I knew that I was living there already.

Q. Where were you born?

A. At Servilleta.

Q. Do you know the place called Tio Ortiz hill?

A. I know, because I was shown the place.

Q. Where is the place?

A. Towards the north, near the San Antonio mountain.

Q. How near and in what direction from the mountain?

A. It is about five or six miles from the San Antonio mountain, in the direction between the south and west.

Q. How did you learn that name for that mountain?

Q. My father told me it was the Loma de Tio Ortiz.

Q. Is there another place in the vicinity of the Petaca known as Lomita de Tio Ortiz?

A. There is one below, at the Rio de las Tucas.

Q. Where is that with reference to Buckman's mill?

A. It is also in the direction between south and west.

Q. Do you know why that lomita was so named and called?

A. Because at that place my father constructed some cor'als for lambing some sheep.

Q. In what year?

A. About the year '68, I think.

Q. What was the name of your father?

A. Augustin Ortiz.

Q. Where did he live?

A. At Petaca.

Q. How long did he live there?

A. I do not know how many years he had lived there; I was young.

117 Q. Can you tell how old you were when you first went to Petaca?

A. No, sir.

Q. When you first went there, how many heads of families were living there?

(Objected to as being immaterial. This man was born long after 1848.

Objection sustained.)

Cross-examination by Mr. BURKHART:

Q. What year were you born in?
A. I was born in the year '57 or '58.
Q. Can you read or write?
A. No, sir.
Q. Do you know Ventura Martinez?
A. Yes, sir
Q. When did you see him the last time?
A. I have seen him the last time here.
Q. Who summoned you to come here?
A. Nobody summoned me.
Q. You just come here of your own accord?
A. Yes, sir.
Q. Anybody paying your expenses?
A. I think so.
Q. Did you see Ventura Martinez at Petaca this week?
A. Yes, sir.
Q. Didn't he, in the presence of Luciano Gutierrez and Ricardo Alire, offer you $2 a day and your expenses at Petaca on last Monday?
A. No, sir.
Q. Who asked you to come down here?
A. He asked me to come here, but he did not offer to pay me.
Q. Mr. Ortiz, on the 27th day of February last, before Mr. George Haskell, a notary public of Rio Arriba County, N. M., in the presence of Albert Haskell and Morris Lightley, did you not make an affidavit with reference to the location of the Loma de Tio Ortiz?
A. Mr. Haskell asked me if I knew about this Loma de Tio Ortiz, so called, formerly, and I said "Yes;" and then he asked me if I knew anything about the Lomita de Tio Ortiz, and I answered "Yes," because my father had lambing corrals there.
Q. Did you make an affidavit?
A. He did not administer any oath to me; he only asked me if I knew and could make an affidavit, and I said I did not know.
Q. In what year did you say you were born?
A. In '47 or '48.

118 RICARDO ALIRE, called and sworn as a witness for the petitioners in rebuttal, testified through the medium of the official interpreter as follows:

Direct examination by Mr. BARTLETT:

Q. State your name, age, and residence.
A. My name is Ricardo Alire; I was born in the year '50; my residence is at La Petaca.
Q. How long have you lived there?
A. Since the year '71.
Q. Do you know the location of the Tio Ortiz hill?
Mr. BURKHART. Now, I object to that question. It has already been gone into as a part of their original case, and I insist it is properly a part of their original case. He is compelled to show as a part of his case in chief the location of these objects. Then the Government answers that, which we have done, and that ends it.

The COURT. We think this part of the case has been testified about enough, and any further testimony on either side would be simply multiplying witnesses and testimony on a question which we think has been sufficiently gone into. Objection will be sustained.

Q. Did you make any affidavit, as was asked you about?

A. He did not administer any oath to me; he only asked me if I could make an affidavit, and I said I did not know.

Mr. HOWARD:

Q. In what year did you say you were born?

A. In the year '47 or '48.

Mr. BARTLETT. Under the ruling of the court, I have nothing more to ask this witness.

RICARDO ALIRE, a witness cal'ed and sworn on behalf of the petitioners, testified through the medium of the official interpreter as follows:

Mr. BARTLETT:

Q. State your name, age, and residence.

A. My name is Ricardo Alire; I was born in the year '50; my residence is at La Petaca.

Q. How long have you lived there?

A. Since the year '71.

Q. Do you know the location of the Tio Ortiz hill?

Mr. BURKHART. Now, I object to that question. It has already been gone into as a part of their original case, and I insist that it is part
119 of their original case. He is compelled to show as a part of his case is chief the location of these objects; then the Government answers that, which we have done, and that ends it.

The COURT. We think this part of the case has been testified about enough, and any further testimony on either side would be simply multiplying witnesses and testimony on a question which we think has been sufficiently gone into. Objection will be sustained.

Mr. BARTLETT. Under the ruling of the court I do not care to ask this witness anything further.

PRESENTATION DURAN, a witness called and sworn on behalf of the petitioners, testified through the medium of the official interpreter as follows:

Mr. BARTLETT:

Q. State your name, age, and residence.

A. P. Duran; my residence is at Petaca; I am thirty-three years old.

Q. Do you know of a small hill located in the Petaca grant known as the Lomita Ortiz?

Mr. BURKHART. Objected to as immaterial to this case. If the court please, it is an effort, in an indirect way, to get in more testimony as to the location of this north boundary, the Tio Ortiz Hill?

The COURT. The Lomita Ortiz, its location and so forth, was brought out by the Government, and he may answer the question enough and to the extent to show the origin of the name Lomita de Ortiz.

Q. Do you know a small hill located on the Petaca grant known as the Lomita de Ortiz?

A. Yes, sir.

Q. Where is that lomita located with reference to Mr. Buckman's mill?

A. Opposite the old mill site of Mr. Buckman, to the west.

Q. When did you first know of this Lomita de Ortiz?

A. In '74.

Q. State how you happened to learn of it at that time, where you were, and from whom you learned the name.

A. I was at the place of Las Tucas, about a mile from there, and there was a man there by the name of Agustin Ortiz at that place, and I also was herding some sheep.

Q. Where did Agustin Ortiz live at that time?

A. At Petaca.

Q. What, if anything, did he say to you about that place that you were lambing sheep?

A. My father told me it was so called, and I was with him when the people called it by that name.

Q. Did Agustin Ortiz say anything to you in regard to this place that you were lambing?

A. He did not tell me. I heard it from other people—from
120 the people generally. I know that the people called it Lomita de Ortiz, because there was a place there that he had taken for his sheep.

Q. Do you know how long before that he had taken that place for his sheep?

A. No, sir; I cannot state the time, but at the time when I went to that place I knew it was called by that name.

Q. Agustin Ortiz was with you there at the time, you said, didn't you?

A. He was at his ranch and I was at my ranch. The ranches were a mile apart.

Q. Do you know Desederio Ortiz?

A. Yes, sir.

Q. Is he a son or any relation of Agustin Ortiz?

A. He is a son.

Q. What, if anything, did he ever tell you in regard to this Lomita de Ortiz?

Mr. BURKHART. Objected to, as Mr. Ortiz is here and can testify for himself.

(Objection sustained.)

Cross-examination by Mr. BARTLETT:

Q. In what year were you born?

A. In '62.

Q. Where did Agustin Ortiz live?

A. In Petaca.

Q. Town of Petaca?

A. Yes, sir.

Q. When did he die?

A. In 1879.

Q. How did he die?
A. A horse killed him.
Q. Was he an old man or a young man at that time?
A. He was a very old man.

RICARDO ALIRE recalled for further examination.

By Mr. BARTLETT:

Q. Do you know a place on the Petaca grant known as the Lomita de Ortiz?
A. I know it.
Q. Where is it located with reference to Buckman's mill?
A. It is to the west, to the sunset, from Buckman's mill; maybe between south and west from the mill.
Q. Was it formerly known by any other name?
A. When I knew it it was called Lomita de Ortiz. I made a mistake there. Is that what you stated?
Q. What did they call it?
A. I knew it when I was somewhat young; and there was
121 a ranch upon that hill, a sheep ranch, belonging to a man by the name of Agustin Ortiz.
Q. In what year was that?
A. In '69.
Q. What improvements had been put there on that ranch, and who placed them, if you know?
(Objected to as immaterial.
No ruling.)
A. The sheep belonging to Agustin Ortiz were there, and there were some corrals.
Q. When did you first hear of it as Lomita de Ortiz?
A. In that same year of '69—I made a mistake; I knew it by the name of Rancho de Agustin Ortiz in that year.
Q. In 1869?
A. Yes, sir.
Q. When did you first know it as a hill?
A. I am not certain about the year, but it was not long afterwards when I heard it called by that name.
Q. Do you know how it came to be called the Lomita de Ortiz?
A. Now?
Q. *Q*hen it was first called the hill of Ortiz instead of the ranch of Ortiz?
A. I have heard it said that for the reason it was the place taken by Agustin Ortiz, deceased, for his sheep.

Cross-examination by Mr. BURKHART:

Q. In what year were you born?
A. In the year '50.
Q. Can you read and write?
A. No, sir.
A. No, sir.
Q. In what year were you married?
A. In the year '69.

Q. How did you happen to come here, Mr. Alire; did you come here of your own accord?

A. No, sir.

Q. Who asked you to come?

A. I come with Don Ventura and other men.

Q. Who is Don Ventura?

Mr. BARTLETT. I object to these questions, if your honors please, as irrelevant and immaterial. Of course these men were summoned here, but whether they were or not, or under what circumstances they did come, is immaterial.

(No ruling.)

Q. How Don Ventura find out you knew these things?

A. I do not know.

122 JESUS MARIA LUCERO, a witness called and sworn heretofore, is recalled for further examination by the petitioners.

By Mr. BARTLETT:

Q. You were one of the commissioners appointed at that meeting at Petaca to present this grant to the surveyor-general?

A. Yes, sir.

Q. At that time you and the other commissioners and other people knew of the partition of the lands at Petaca in 1848?

A. Yes, sir.

Q. How did you learn that such a partition had been made?

A. I knew it in this manner: By searching for the papers which we were after, it was observed that there was an hijuela or lease amongst some persons there in Petaca to whom this partition had been made.

Mr. BURKHART. I wish to enter an objection to the answer as given by the interpreter. In doing so, I wish to state *that* it with the greatest deference and reluctance, but the witness plainly said "they found an hijuela of 1848," and I respectfully ask that this be included in his answer.

By the COURT. The question will be repeated.

Q. (Repeated.) How did you learn that such a partition had been made?

A. We knew it in this manner: Because Juan Antonio Pena in several of the meetings had stated that he had in his possession a *lease* of *of* the persons to whom a partition had been made in 1848, when the leases were made, and who were interested in procuring these grant papers. Amongst the names on the list were the names of his mother and brother-in-law.

Q. When he speaks of a "list," does he mean a list that Mr. Pena had or a list that the commissioners made for the surveyor-general?

A. I am now speaking of the persons who signed the list for the purpose of making a claim for this grant.

Q. This grant of 1836?

A. I am not referring to the list of documents that I have presented here.

Q. Well, go on with your former answer.

A. I saw that some one present there had an hijuela or lease of the partition made in 1848, and request was made that that lease should be

presented. Juan Antonio Pena did not want to let it, and then when he refused to present this lease, some stated that it was not necessary that it should be presented, because it was only his memoranda of the portions that had been allotted to each one, and that the partition was not legal because the order for the partition had not been issued by any competent authority.

Q. Did you make any further efforts to get that lease or partition?

A. That time was the only time we made any effort to see it; and after that we did not even remember it or give it any thought, because they said it was not necessary.

123 Q. Do you know whether *that* the time of this partition in 1848 any of the grantees of this grant of 1836 were living then?

A. I do not remember.

Q. You had begun to state that some of the relations of Juan Antion Pena were included in this other list of the occupants of the grant, had you not?

A. I said that the name of his mother and the name of his brother-in-law, and I believe the name of his sister appeared in the list of those persons who were appointed for the purpose of prosecuting for the documents of 1836.

Q. Was the father of Juan Antonio Pena alive at that time?

A. He was dead.

Q. Did you know the father of Juan Antonio Pena?

A. Yes, sir.

Q. Did you know of his going to Petaca for the purpose of making a partition in 1848?

A. I did not know.

Q. When did you first learn that any such partition had taken place?

A. At the same time that we were searching for the papers; I learned that this partition was made after 1836, in order to specify what particular land belonged to each one. Before that time I could not know about this partition, and I did not know anything about this until I was appointed to the committee with these gentlemen, and then I knew all about these matters.

Q. Was Juan Antonio Pena one of the gentlemen who selected you as one of the commissioners to present this grant.

(Objected to as immaterial. Objection overruled.)

A. No, sir.

Q. Was he claiming in this grant at that time?

A. No, sir.

Q. Do you know whether he had been a claimant in this grant and had disposed of his interests at that time?

A. At that time they had not sold anything, because his mother was living yet, and she had possession of the land.

Q. Did his mother appear in the list?

A. Yes, sir. Maria de la Cruz Trujillo is the name, and she must be in the list.

Cross-examination by Mr. BURKHART:

Q. Did you ever see this paper that Mr. Pena had?

A. No, sir.

Q. Now, you say: "They said that the paper that Mr. Pena had was not issued by the legal authority." Who said?

A. The men who were living there, and who had been in possession there, and who had purchased land there.

Q. The old people around there, then, knew of the partition of 1848, did they?

124 A. Yes, sir; they knew, because they then said that there had not been a partition, but that it had only been a sort of a memoranda or note of what portions each one had.

Mr. BARTLETT. I believe that is all.

Mr. BURKHART. I would like to offer some evidence in regard to this Lomita de Ortiz, and also would like to put Mr. Tipton upon the stand.

Mr. HOWARD: I ask leave to withdraw these original documents which I have introduced, and make translations of them.

Leave was granted to do so.

Then the following stipulation was agreed to by all the parties, orally and in writing:

"Claimants under cause No. 153 and the defendant, The United States, admit that plaintiffs under and in cause No. 99 are in whole or in part—that is, some of them are—descendants and legal representatives of those named in the body of the act of juridical possession of the grant of La Petaca, A. D. 1836, and the annexed list thereto, other than Jose Julian Martinez, Francisco Antonio Atencio, and Antonio Martinez, the parties whose names are set forth in the petition for the same grant.

Signed and agreed to by—

L. Z. & M. Z. FARWELL and
S. BURKHART,
Ass't U. S. Att'y."

Court then took an adjournment until to-morrow morning at 10 o'clock a. m.

FRIDAY MORNING, *March 20th, 1896—at 10 o'clock a m.*

Court met pursuant to adjournment.

All parties present as on yesterday.

JESUS MARIA LUCERO recalled on behalf of the Government.

By Mr. BURKHART:

Q. I think you testify yesterday that you have lived in the neighborhood of Petaca all your life—that is, at Servilleta and Ojo Caliente?

A. I said that I was born in Ojo Caliente, and after that I went to live at Servilleta, and in the year '65 I went to Petaca.

Q. As far back as you remember, what was the condition of the country in the neighborhood of Petaca? Was it quiet and peaceful or were the — on the warpath most of the time?

A. When I went to Servilleta the Indians were not yet at peace.

Q. Do you know what is the general understanding in that part of the country amongst the old people as to when the Indians ceased to be troublesome and when did they commence to be troublesome?

A. I can't tell you of my own knowledge, but I know it is so
125 that as late as 1855 the Indians were hostile and attacked Juan Antonio Pena, who is here present, and Ponteleon Pena, between Ojo Caliente and Servilleta, and carried away the wife of Juan Antonio Pena.

Q. Had there ever been a time when the Indians were at peace with the whites in that part of the country?

A. At different times.

Q. What times were they?

A. I do not remember the times. About the years '52 and '53 the Indians attacked Servilleta, and a party of men went out in search of them. The Indians were the Apaches. They were never at peace; they had wars from time to time.

Q. They were always dangerous, so far as you ever heard, from the earliest days?

A. Yes, sir; they were always dangerous. Even as late as '59—I do not remember the exact year—the Indians attacked and killed some men right at Servilleta.

JUAN ANTONIO PENA recalled on behalf of the Government.

By Mr. BURKHART:

Q. In what year were you born?

A. In the year '30.

Q. From the time of your earliest recollection what was the condition of the country in the neighborhood of Petaca and Servilleta with reference to hostilities or wars with the Indians?

Mr. BARTLETT. We will admit that the Indians were very hostile there during all those times, and that the people were in a state of war there all the time.

Mr. BURKHART. Will you admit that condition to exist from 1825 to 1840?

Mr. BARTLETT. Yes, and make it better yet. I will admit that such trouble and conditions existed from 1825 to 1860.

Mr. BURKHART. Very well. I will excuse this witness.

Mr. BARTLETT. No cross-examination.

WILL M. TIPTON, a witness called and sworn on behalf of the defendant, The United States, testified as follows:

Direct examination by Mr. BURKHART:

Q. Mr. Tipton, you have testified in this case before?

A. Yes, sir; I think so.

Q. Look at the signature which appears on the original grant paper introduced by Mr. Bartlett, purporting to be the signature of Jose Maria Barela, and the signature on the paper marked Exhibit D, identified by witness Pena and purporting to be the signature of Jose Maria Barela, and state whether or not you have compared those signatures and are prepared to state your opinion as to whether or not those signatures were made by the same person.

126 Mr. HOWARD. I object to this document here as not being described in any way, and that there is no testimony here at all

that it is the signature of Jose Maria Barela, and that it is immaterial to this case.

(Objection overruled.)

A. I have examined the signatures in question and am prepared to state my opinion about them.

Q. What is your opinion as to the*re* being or not being written by the same person?

A. My opinion is they were written by the same person.

Mr. BARTLETT. No cross-examination.

Mr. BURKHART. I would like to introduce evidence to rebut General Bartlett's evidence in regard to the Lomita de Ortiz. That is all.

The COURT. You may offer evidence on that one point only.

NESTOR MARTINEZ, called and sworn as witness on behalf of the United States, testified through the medium of the official interpreter as follows:

Direct examination by Mr. BURKHART:

Q. What is your age?

A. I am sixty years old.

Q. Where were you born?

A. At El Rito.

Q. Where do you live now?

A. At Cañon Vallecito.

Q. How long have you lived there?

A. In the year '57 I went there and I have been living ever since.

Q. Do you know a place called Petaca and the immediate vicinity?

A. Yes, sir.

Q. Do you know a hill in the vicinity of Buckman's mill a little to the southwest?

A. Yes, sir; I know a hill there.

Q. What is the name of that hill?

A. Loma de Tio Ortiz.

Q. Have you ever heard that hill called by any other name?

A. No; only by the name Tio Ortiz.

Q. When did you first know it?

A. Since the year '61.

Q. How did you become acquainted with it at that time?

A. I was herding some sheep belonging to Damecio Jiron, and he sent me there to establish a sheep camp over there.

Q. Did you ever hear of that hill before you saw it?

A. Yes; I had heard the name of it, but I did not know it until that time.

127 Q. When did you first hear of it, if you remember?

A. When I was living at Vallecito, in the year '57.

Q. Do you know a hill anywhere in that vicinity called the Lomita de Ortiz?

A. No, sir.

Q. Did you ever hear of such a hill?

A. I have heard of Loma de Tio Ortiz, but I have never heard of Lomita de Ortiz.

Cross-examination. Mr. BARTLETT:

Q. Do you know Agustin Ortiz?
A. Yes, sir.
Q. Where did he live?
A. At Petaca.
Q. When did you first know him?
A. I do not remember the year when I knew him first.
Q. Did he have a sheep ranch at this place you call Loma de Tio Ortiz, near Buckman's mill?
A. Yes.
Q. Did he have corrals there?
A. There were some corrals there.
Q. Were those corrals there when you first went there?
A. Yes; there were some corrals there.
Q. Were they or not claimed by Agustin Ortiz?
A. I did not see him claiming any corrals.
Q. At the time you were at this place, wasn't it known as Ortiz's ranch of sheep camp?
A. No, sir; I knew it by the name of loma.
Q. What loma?
A. Loma de Tio Ortiz.
Q. What kind of a hill is that? Is it a distinct and separate hill from the surrounding country, or is it a hill rising out and above other hills surrounding it?
A. It is a hill apart from other lomas.
Q. You never heard of any other Tio Ortiz hill in that country?
A. No, sir.
Q. Was there any water at this place that you have described?
A. Yes; there was some water at the river.
Q. Was this hill right close to the river?
A. Yes, sir; it is near.
Q. What river?
A. Rio de las Tucas.
Q. How far from the river?
A. About half a mile or quarter of a mile; it is near.
Q. How far from the settlement of Petaca and in what direction?
A. From the Petaca it is to the north. I thi*kn* about ten miles distant, more or less, from the town of Petaca.

128 N. JARAMILLO recalled on behalf of the Government.

By Mr. BURKHART:

Q. You have already testified as to the hill call' the Loma de Tio Ortiz, in the neighborhood of Buckman's mill?
A. Yes, sir.
Q. Have you ever heard that hill called by any other name?
A. No, sir.

Cross-examination by Mr. BARTLETT:

I believe I have no cross-examination.

This was all the evidence.

I hereby certify that the above and foregoing constitutes and is a full, true, and complete transcript of the proceedings had in this cause on the days mentioned and of all the proceedings had herein upon the adjourned hearing, and that this document and the one heretofore filed and certified to constitute and a full, true, and complete transcript of all the proceedings had in open court in the cause entitled L. Z. and M. Z. Farwell and others *vs.* The United States, involving the title to property claimed under the La Petaca grant.

L. F. PARKER, Jr.,
Stenographer, Court of Private Land Claims.

(Here follows map marked page 128a.)

EXHIBIT B FOR PETITIONERS IN CAS' NO. 153.

Petition, grant, and act of possession.

Sello tercero (seal). Dos reales.

Para los años de mil ochocientos treinta y seis y ochocientos treinta y siete.

RESPTO. AYUNTAMTO. José Julian Martinez, vecino de esta jurisdicion: Ante V. S. y en union de mi padre Antonio Martinez, Franco. Anto. Atencio, y hijos del ultimo; con la sumicion qe. correspe. y bajo las protestas mas legales representamos diciendo: Que siendo nuestra intencion girar por la recomendable ocupacion de la agricultura, para de èste modo auciliar á la sostencion de nuestras familias, y satisfechos que Rio Arriba de esta jurisdn. está un terreno baldio, el cual le llaman la Petaca: Suplicamos á V. S. q. en caso que no haya perjuicio de tercero ni reconosca propiedad en dho. terreno ningun indibiduo, se sirva V. S. hacer las indagaciones q. a bien tenga, y informa á la E. diputacion Probincial lo q. crea conbeniente en el particular anexo á nuestra solicitud, que es gracia q. impetramos &a.

Ojo Caliente, énro. 29 de 1836.

JOSÉ JULIAN MARTINEZ. [RUBRICA.]

129 El rrespectable ayuntamto. qe. tengo el onor de precidir, en consequencia de que los contenidos en la merced qe. acompaña á la precentacion que antecede no an cultivado ni puesto clase alguna de industria en el terreno que se les dió y que aora nuebamente se solicita en el largo tiempo de 12 años corrientes, opina qe. á los nuebos solicitantes se le debe conseder en birtud de que aqueyos por la causa espresada, han perdid' el dro. con que se les agracia bajo las condiciones que en dha. merced se espresan: adbirtiendo que tanvien cree este ayuntamto. que los hijos de Franco. Anto. Atencio no deben entrar en parte de la rreferida poseccion, por quanto son menores de edad, sujetos á patria potestad y sin el conocimiento necesario pa. permitir ni dar poder pa. qe. en su nombre se pida lo que eyos no estan en estado de adquerir por esta via.

La Exma Diputacion dispondrá lo que sea mas arreglado á las leyes.

Ojo Caliente, Febrero 22, de 1836.

JOSÉ ANTO. MARTINEZ. [RUBRICA.]

JOSÉ JULIAN MARTINEZ, *Secrto.* [RUBRICA.]

SANTA FÉ, *Febrero 25, de 1836.*

Visto el acuerdo del Ayuntamto. del Ojo Caliente fha. 22 del corriente, en qe. dice no haber obice para qe. al impetrante y socios se les done el terreno qe. se cita, mismo a qe. no tienen ya dro. los anteriormente mercenados en el, por haverlo abandonado; el alcalde del citado punto, pondrá en posecion á los qe. ahora lo pretenden vajo la formula requerida, y con arreglo á la ley de la materia estendiendo lo donacion gral. en qe. presisamente debe constar los linderos de dha. posecion y sin perjuicio de tercero, siñiendo igualmente á los agraciados á las obligaciones prescriptas por las leyes para adquerir dro.; a cuyo fin el alcalde recogerá el documento gral. del reparto qe. será para el archivo, y de este dará los testimonios qe. le pidieren previos sus dros. correspondientes.

PEREZ. [RUBRICA.]

Sello cuarto (seal). Una cuartilla.

Para los años de mil ochocientos treinta y seis y ochocientos treinta y siete.

En Santa Cruz del Ojo Caliente, jurisdicion de este nombre, á los veinte cinco dias del mes de Marzo de mil ochocientos treinta y seis: En cumplimiento del decreto del Sor. Jefe Politico y Militar de este Territorio de Nvo. Mejico Dn. Albino Perez, fecha 25 de febrero del mismo año en que me ordena poner en posecion á los impetrantes qe. solicitan el terreno de la Petaca y segun consta por esta presentacion de 29 de Enero del mismo año, pasé y rrepartí dho. terreno con preciencia de los interesados, dándole á cada *h*uno de los que constan en la lista de á ciento y cincuenta varas á lincarrecta, dándoles los linderos por el sur la puerta del
130 cañoncito y tierras de José Miguel Lucero; por el Norte la loma qe. comunmente llaman de Tio Ortiz, y por el oriente el rrallo de las aguajes á Petaca, por el poniente hasta donde sujeta la merced del Vallecito en cuyo ambito se colocaron los nuevamente mercenados, solo ci destos le doné al C. Felipe Jaques, desde el lindero de Venito Martin hasta el lindero de Eusebio Chavez, por ser *h*una angostura de poca utilidad, en seguida al C. Manuel Lujan dos anconcitos, cin medir continué la rreparticion para el cañoncito citado y le doné al C. Mariano Peña dos anconcitos mui estrechos, cin variar proseguir, y doné en el mismo cañoncito al C. Anto. Hujenio Ortiz un anconcito, tamvien cin bariar, ciguiendo la misma rruta por el mismo cañoncito le doné al C. José Franco. Lucero *h*un anconcito, tambien cin bariar, y al C. José Anto. Ducero otro anconcito y siendo el lindero por el sur deste ultimo la boca del mismo cañoncito, dejandoles para plaza ciento y cincuenta varas y para *g*uertas las mujeres cincuenta y cincuenta para entradas y salidas, quedando por *h*abrevadero comun en la puerta de cañada de la dorada ciento y cincuenta varas á linia rrecta, cuya donacion hise en no*m*bre de la Soberania Nacional, con areglo á la ley de la materia, quedando entendidos los mercenados que constan en la adjunta lista que los pastos, montes, aguas y a*r*revaderos son comunes, haciéndoles ber qe. el qe. no ocupare y cultivare el terreno que se le agració dentro del termino de cinco años, para adquirir el dor., no podrá vender, trocar, ni enajenar ni ser admitido en nueva poblacion y ci por si abandonare el citio queda advertido de no tener dor. por demandarlo, aci la ley, y entendidos y con-

venidos de todo esto rrecibieron la rresevida posecion, en cuya birtud arrancaron yerbas, pegaron brincos, tiraron piedras y dieron voces de alegria, diciendo viva Dios, viva la nacion, y viva el soberano Congreso y la ley qe. nos rrije, qe. nos ampara, y otras voces de rregocijo, en culla virtud tomaron la posecion; y para qe. en todo tiempo conste por este decreto, firmé la presente merce y donacion con cuantas facultades tubo a bien Su Señoria darme para el efecto, de la rreparticion segun consta por el decreto ya citado el qe. queda adjunto en la presente merced, ciendo testigos los C. C. Jesus Ma. Barela y Jose Fco. Lucero, segun lo echo por conbeniente.

JOSÉ ANTO. MARTINES. [RUBRICA.]

JESUS MA. BARELA. [RUBRICA.]

Ps. Da.—A Juan de Jesus Xaques, se le dió del lindero de José Grabiel Bigil has. un pinabete qe. está al norte. Vale.

[RUBRICA.]

Sello Cuarto. (Seal.) Una cuartilla.

Para los años de mil ochocientos treinta y seis y ochocientos treinta y siete.

Lista de los C. C. s. qe tomaron posecion en el terreno de la Petaca, segun consta qe. está en la merse qe. está al otro lado.

131 A saber:

Miguel Trujio.
Juan de Jesus Ogmes.
Lorenso Griego.
Franco Valdes.
Franco Vigil.
Juan de Jesus Vigil.
Joaquin Martin.
Jesus Ma. Barela.
Jose Anto. Lucero.
Jose Grabiel Vigil.
Juan de Gesus Jaques.
Juan de los RRelles Sena.
Carlos Torres.
Anto. Feliciano Martin.
Jose Bernardo Torres.
Venito Martin.
Felipe Jaques.
Eusebio Chavez.
Anto. Jose Martin.
Anto. Jose Chaves.
Sabino Chaves.
Anto. Martin.
Franco. Anto. Atencio.
Jose Julian Martin.
Jose Julian Sanchez.
Amador Sanchez.
Jose Franco' Rruibal.
Juan Anto. Chavez.
Anto. Trugio.
Jose Trujuio.
Jose Ma. Jaques.
Manuel Lujan.
Mariano Pena.
Hujenio Ortiz.
Jose Franco. Lucero.
Jose Antonio Lucero

I hereby certify that the foregoing on eight pages has been faithfully compared and is a true copy of the original Spanish documents on file in my office in the case of the Petaca grant.

Santa Fé, February 28, 1893.

E. F. HOBART,
Surveyor-General.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

EXHIBIT C FOR PETITIONERS IN CASE NO. 153.

Translation of document marked "Exhibit B."

Seal third (seal). Two reals.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

RESPECTABLE AYUNTAMIENTO: I, Jose Julian Martinez, resident of this jurisdiction, appear before your honor and, together with my father, Antonio Martinez, Francisco Antonio Atencio, and the sons of the latter, with all submission and under the most legal protestations, represent and state—

That it being our intention to engage in recommendable occupation of agriculture, so as by this mode to aid in the support of our families, and being satisfied that up the river from this jurisdiction there is a tract of public land, which is called the Petaca, we therefore pray your honor that, in case no injury would result to any third party, and you know of no individual owning said land, which your honorable body will please ascertain, and inform the illustrious provincial deputation whatever you may deem proper in respect to our application, which is a favor we solicit, &c.

Ojo Caliente, January 29th, 1836.

JOSE JULIAN MARTINEZ.

132 The respectable ayuntamiento, over which I have the honor to preside, inasmuch as that the parties in the grant accompanying the foregoing petition have not cultivated nor placed any kind of improvements on the land which was given them in the long period of full 12 years, and which is now again applied for, are of opinion that the same should be granted the *the* new applicants for the reason that the former have forfeited the right granted them for the cause stated and under the conditions expressed in said grant; observing that this ayuntamiento also believes that the children of Francisco Antonio Atencio should not become a party in the said possession, as they are minors, subject to paternal control, and do not possess the knowledge necessary to empower or give authority to petition in their name' for that which they are not in a condition to acquire in this manner.

The most excellent deputation will direct as may be most in accordance with the laws.

Ojo Caliente, February 22nd, 1836.

JOSE ANTONIO MARTINEZ.

JOSE JULIAN MARTINEZ, *Secretary.*

SANTA FÉ, *February 25, 1836.*

Having seen the action of the ayuntamiento of Ojo Caliente of date 22nd instant, in which they say there is no objection to granting the applicant and his associates the land mentioned, the former grantees not possessing now any right herein, they having abandoned the same, the alcalde of said place will place those who now apply for the same in possession thereof in the required form and in conformity with the law on

the subject, setting forth the general donation, in which shall necessarily be stated the boundaries of said possession, and without prejudice to any third party; also binding the grantees to the obligations prescribed by the laws to acquire title, for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom, as may be requested of him, on payment of his corresponding fees.

PEREZ.

Seal fourth (seal). One cuartilla.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

At Santa Cruz del Ojo Caliente, jurisdiction of this name, on the twenty-fifth day of the month of March, one thousand eight hundred and thirty-six, in compliance with the decree of the civil and military governor of the Territory of New Mexico, Alvino Perez, of date February 25th of the same year, in which he directs me to place in possession the petitioners who have applied for the Petaca tract of land, and as is set forth in their petition of date 29th of January of the same year, I proceeded to distribute said land in the presence of the parties interested, giving to each one of those men-
133 tioned in the list one hundred and fifty varas in a direct line, designating to them as their boundaries on the south the entrance to the canoncito and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz Hill, on the east the creek of the aguaje of the Petaca, and on the west the boundary of the Vallecito grant, within which limits the said new grantees were located. Of these I donated only to citizen Felipe Jaquez from the boundary of Vicente Martin to that of Eusebio Chaves, the land being a narrow strip and of little utility; thereupon I donated to citizen Manuel Lujan two small valleys, which were not measured with the line and reach to the distribution of the said canoncito, and I donated to citizen Mariano Pena two small valleys, very narrow, without varying; and, continuing, I donated to citizen Antonio Eluterrio Ortiz, in the same canoncito, a small valley, also without varying; following the same course in the said canoncito, I donated to citizen Jose Francisco Lucero a small valley, also without varying, and to Jose Antonio Lucero another small valley, the boundary thereof being on the south the mouth of the same canoncito, leaving therefor a plaza one hundred and fifty varas, and fifty for women's gardens and fifty for ingress and egress, there remaining at the mouth of the canada de la Dorada, for common watering places, one hundred and fifty varas in a direct line, which donation I made in the name of the national sovereignty, in conformity with the law on the subject, the grantees mentioned in the annexed list understanding that the pastures, forests, waters, and watering places are in common, and they were further informed that he who fails to occupy and cultivate the land granted within the term of five years, in order to acquire title, the same cannot be by him sold, exchanged, nor alienated, nor will he be admitted in a new settlement; and if any should of their own accord abandon the tract, they remain informed further that they possess no right, such being the requirements of law; and being informed of and agreeing to all this,

they received the accepted possession, in virtue of which they plucked up herbs, leaped, cast stones, and shouted with joy, saying, God be praised, long live the nation, long live the sovereign congress and the law that governs and protects us, and other manifestations of pleasure, by virtue of which they took possession; and, that it may so appear at all times, I, under this decree, signed this grant and donation with all the authority His Excellency was pleased to confer upon me for the purpose set forth in the above petition and expressed in said decree attached to the present grant, the witnesses being the citizens Jesus Maria Barela and Jose Francis Lucero, as properly made.

JOSE ANTONIO MARTINEZ.
JESUS MARIA BARELA.

P. S.—There was given to Juan de Jesus Jaquez from the boundary of Jose Grabiel Vigil to a pinobete on the north; valid.

[RUBRIC.]

134 List of the citizens who took possession of the Petaca grant of land, as set forth in the grant, on the other side of this, to wit:

Miguel Trujillo, Juan de Jesus Olgurin, Lorenzo Griego, Francisco Valdes, Francisco Vigil, Juan de Jesus Vigil, Joaquin Martin, Jesus Ma. Barela, Jose Antonio Lucero, Jose Grabiel Vigil, Juan de Jesus Jaquez, Juan de los Reyes Sena, Carlos Torres, Antonio Feliciano Martinez, Jose Bernardo Torres, Benito Martin, Felipe Jaquez, Eusebio Chaves, Antonio Jose Martin, Antonio Jose Chavez, Sabino Chaves, Antonio Martines, Francisco Antonio Atencio, Jose Julian Martin, Jose Julian Sanches, Amador Sanchez, Jose Francisco Roibal, Juan Antonio Chaves, Antonio Trujillo, Jose Trujillo, Jose Ma. Jaquez, Manuel (defaced), Mariano Pena, Luterio Ortiz, Jose Francisco Lucero, Jose Antonio Lucero.

The foregoing translation made by me from the Spanish is correct, to the best of my knowledge and belief.

SAM'L ELLISON.

Subscribed and sworn to before me this 12th day of February, 1875.

JAMES K. PROUDFIT,
U. S. Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fé, New Mexico, February 18, 1875.

The foregoing translation, having been by me compared with the original in Spanish and found correct, is hereby adopted for the official translation.

DAV. J. MILLER, *Translator.*

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, July 21, 1883.

The foregoing is a correct copy of the original paper on file in this office in private land claim No. 105, known as the Petaca grant.

Witness my hand and official seal.

[SEAL.] HENRY M. ATKINSON,
Surveyor-General.

135 *Testimony before surveyor-general offered by petitioners in case No. 153.*

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, June 27, 1877.

In the matter of the petition filed in this office June 4, 1877, of the heirs and legal representatives of Julian Martinez and others, original grantees of the tract of land in Rio Arriba County, Territory of New Mexico, approved as No. 105, Feb. 20, 1875, by the surveyor-general, to introduce additional testimony in the case for the purpose of more definitely identifying the location of the boundary calls of said grant, and especially that of the northern boundary, the prayer of said petition having been granted.

JESUS MARIA BARELA, being by the surveyor-general first sworn to depose in this case, in answer to the following interrogatories on his oath declares and says:

Question (by SAMUEL ELLISON, attorney). What is your name, age, occupation, and residence?

Answer. My name is Jesus Maria Barela; my age is seventy years, four months; my occupation is farmer, and my present place of residence is at Costilla, in the State of Colorado.

Q. Do you know a certain tract of land in this Territory called the Petaca grant? If so, please state where it is situate and what are its boundaries, if you know them.

A. I know such a tract and grant and am acquainted with its boundaries well. The tract is situate in the county of Rio Arriba, in the Territory of New Mexico. Its north boundary is the loma or hill of Tio Ortiz, its east boundary is the arroyo of the Aguages, its south boundary is the limits of the lands of Jose Miguel Lucero and the mouth of the cañoncito, and its west boundary is the limits of the Vallecito grant. I have known these points since some time before the Petaca grant was made.

Q. As you state you are well acquainted with the boundaries of the Petaca grant above mentioned, please state what peculiarities, if any there are, about the north boundary, the Tio Ortiz hill, and why you know it to be the north boundary of the grant.

A. I have known the Tio Ortiz hill since I was about fifteen years of age, by that name. At the foot of the Tio Ortiz hill and of the mountain is a lake on the north side of the hill. Upon the top of the hill many years ago there stood a large wooden post, with one side hewn off and surrounded with a mound of stones. The post may have rotten down by this time, but the pile of stones must exist there yet. This post was placed there by order of the justice of the peace of the jurisdiction of Ojo Caliente, then embracing that section of the country, who from time to time, as was then the custom, despatched small parties of citizens to recon'oiter the surrounding country for hostile Indians
136 or their trails. These parties were required to proceed as far northward as the Tio Ortiz hill, upon which stood this post bearing a paper, upon which was recorded the date upon which the last reconnoit'ring party had visited the spot, and they were required to remove

this paper, substituting it with another with the date of their visit, and deliver to the justice the paper removed. My father lived then at the town of Ojo Caliente, and several times when he was detailed as one of these parties I went to his place and saw the paper removed, substituted, and delivered to the alcalde, as stated. I know the point I have described as the Tio Ortiz hill to be the north boundary of the Petaca grant because I was one of the original applicants for and grantees in the grant, and that is the point referred to in the petition for the north boundary of the tract applied for. It was so intended by the petitioners and was so granted. I was present at the execution of the act of possession by Martinez.

Q. Please state, if you can, whether there is a place within the limits of said Petaca grant known as and called Las Tusas. If there is, please state the relative position of said Tio Ortiz hill and said Las Tusas.

A. There is such a place. It is called the Valle de las Tusas, and lies mainly within said grant. The Tio Ortiz hill stands above and to the north of this valley—valle.

Q. Please examine the paper now handed you, marked with three crosses (X X X) on the right-hand corner of first page, immediately above the printed words "Dos Reales," and state whether that is the grant which was made to yourself and others for the said Petaca tract.

A. I have examined the paper and find it to be the expediente or muniments in the case. I knew all the signers to the papers personally, and the handwritings of some of them, all of which are genuine in this expediente. The act of possession is in my handwriting, and the signature thereto of Jose Antonio Martinez, the alcalde, is his genuine signature, and I signed with him as his secretary and witness, my signature as it there appears being original and genuine.

Question by the SURVEYOR-GENERAL: Have you any interest in the Petaca grant at this time; and if so, what?

A. I have no interest whatever in the land or the grant, having sold my interest sixteen years ago. I moved from the Petaca tract to my present residence at Costilla in the year 1860, and the following year sold and conveyed all my interest therein.

By ATT'Y:

Q. What official position, if any, have you held in New Mexico and Colorado?

A. In New Mexico I was, as before stated, secretary of the alcalde of Ojo Caliente, and have been justice of the peace in the county of Rio Arriba, in New Mexico, and since my removal to Costilla have served three terms as member of the territorial legislature of Colorado.

JESUS MA. BARELA. [RUBRIC.]

137 Sworn to and subscribed before me this June 27, 1877.

HENRY M. ATKINSON,
U. S. Surveyor-General.

JUAN ISIDRO LUCERO, being by the surveyor-general first duly sworn, on his oath declares:

Question (by Mr. ELLISON). What is your name, age, occupation, and place of residence?

Answer. My name is Juan Isidro Lucero; my age is fifty-eight years; my occupation is farmer, and my place of residence is at the town of Servilleta, in the county of Rio Arriba, New Mexico, where I have resided for the last twenty-five years or more.

Q. Do you know the tract of land known as and called the Petaca grant and its boundaries? If so, please state where it is situate and what are its boundaries.

A. I know such a tract situated in the county of Rio Arriba, in this Territory. Its boundaries are: On the north the hill of Tio Ortiz, on the east the Arroyo de los Aguages, on the south the mouth of the little cañon (boca del cañoncito) and lands formerly owned by Jose Miguel Lucero, and on the west the line of the Vallecito grant, which boundaries embrace a distance north and south of, I think, at least twenty miles, and east and west eight or nine miles.

Q. Are you well acquainted with the Tio Ortiz hill just mentioned; and, if so, how did you acquire your knowledge of it?

A. I am well acquainted with that point. I was there first in 1833 hunting mustangs; afterwards in 1839, and frequently subsequently.

Q. Are you acquainted with a point within said boundaries known as and called Las Tusas? If so, please state its relation on the ground to said Tio Ortiz hill.

A. I know such a point. It is called the Las Tusas Valley, and lies within the grant to the south of the Tio Ortiz hill, the Petaca River running through it. The Tio Ortiz hill stands perhaps half a league to the north of the head of the Petaca River.

Q. How far do you reside from the tract known as the Petaca grant?

A. About a mile to the south.

Question (by the SURVEYOR-GENERAL). Have you any interest in this grant of land?

A. I have none whatever.

JUAN ISIDRO (his x mark) LUCERO.

Witness:

DAV. J. MILLER.

Subscribed and sworn to before me this June 27, 1877.

HENRY M. ATKINSON,
U. S. Surveyor-General.

(Endorsement:) Testimony. The Petaca grant. June 27, 1877. File 179. Recorded on pages 428, 429, 430, 431, 432, and 433, vol. 5, Land Claim Records, in the office of the surveyor-general.

138 DEPARTMENT OF THE INTERIOR,
U. S. SURVEYOR-GENERAL'S OFFICE FOR THE
DISTRICT OF NEW MEXICO,
Santa Fé, N. M., March 19, 1896.

I, Charles F. Easley, U. S. surveyor-general of New Mexico, do hereby certify that the attached and foregoing five (5) pages *is* a true and correct

copy of the testimony of Jesus Maria Barela and Juan Isidro Barela, as the same appear on file in this office with the other papers in the case of private land claim known as the "Petaca" grant (reported No. 105).

In witness whereof I have hereunto set my hand and have caused the official seal of this office to be affixed this the day and year in this certificate first above written.

[Seal of surveyor-general of New Mexico.]

CHAS. F. EASLEY,
Surveyor-General.

EXHIBIT A OF ADJOURNED HEARING FOR CLAIMANTS.

PETACA, N. M., *Dbre. 24, A. D. 1872.*

Nosotros los abajo firmados nos obligamos mutuamente de contribuir en proporcion de nuestros terrenos y sujetos a la tasacion de la comision nombrada para pagar el dia que sea requerida de Dha. comicion todos los gastos que puedan originar en conseguir en el fui de confirmar la mersed de la Petaca lla sea dinero ó terrenos aseguramos la suma que nos toque apagar con nuestros terrenos ó bienes en general tambien declaramos unanimemente que ninguna persona tendra Dho. de participar de los privilegios de Dha. confirmacion si no fuese su nombre en este documento.

1. JOSÉ M. TORRES.
2. DIONISIO TORRES.
3. BIBIAN ESPINOSA.
4. AGUSTIN ORTIZ.
5. BERNARDO GUTIERRES.
6. DESIDERIO VALDEZ.
7. J. ISIDRO VARELA.
8. ANTO. SERAFIN PEÑA.
9. RAMON ESPINOSA.
10. MA. MANUELA GUTIERRES.
12. JERMIN RUIBAL.
13. JESUS VALDEZ.
14. JUAN DE JESUS ALIRE.
15. JUAN ANTO. VALDEZ.
16. JUAN MANUEL MARTINEZ.
17. JUAN JOSÉ MARTINEZ.
18. CORNELIO LUCERO.
19. JESUS MA. LUCERO.
20. MA. MORELA PEÑA.
21. AGAPITO ESPINOZA.
22. JOSE MANUEL TORRES.
23. JOSE DOMINGO ARCHULETA.
24. JOSE MIGUEL GALLEGOS.

139 *Translation of Exhibit "A" of adjourned hearing for petitioners in case No. 153.*

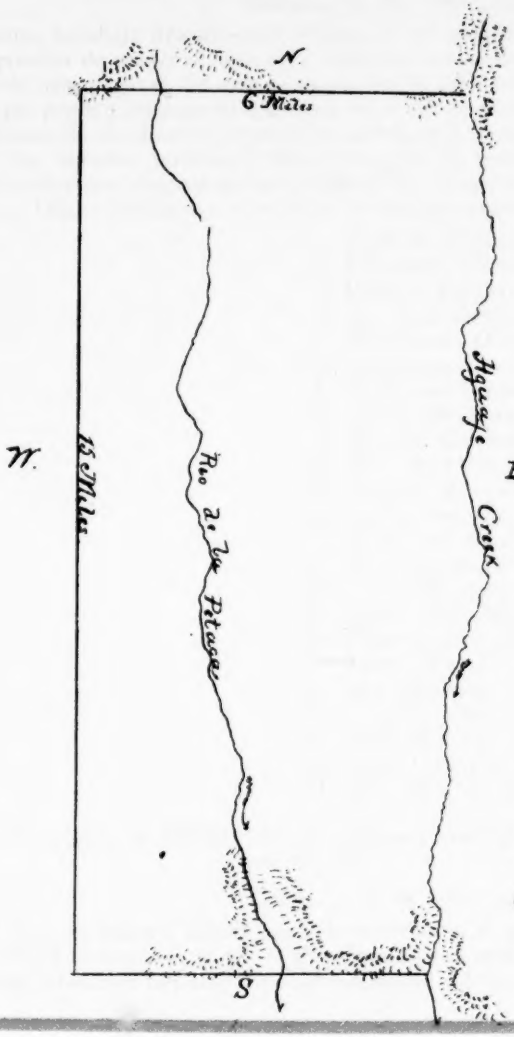
PETACA, N. M., *Dec. 24, A. D. 1872.*

We, the undersigned, jointly agree to contribute, in proportion to our lands subject to taxation, to pay to the committee named for the purpose of paying whenever required by said committee all the costs that may

No. 293
U. States
vs
Tenorio
} p. 139a

Sketch Map
of the
Petaca Land Grant

Rio Arriba County New Mexico



No. 307
Farwell
vs
U. States
} 211

originate in order to have the Petaca grant confirmed, be it cash or land. We hereby secure whatever sum we may have to pay with our land and chattels in general. We declare unanimously that no person shall have right to participate in the privileges of said confirmation if his name be not in this document:

1. Jose M. Torres.
2. Dionisio Torres.
3. Bibian Espinosa
4. Agustin Ortiz.
5. Bernardo Gutierres.
6. Desiderio Valdez.
7. J. Isidro Barela.
8. Anto. Serafin Peña.
9. Ramon Espinoza.
10. Antonio de la Cruz Trujillo.
11. Ma. Manuela Gutierres.
12. Jermin Ruibal.
13. Jesus Valdez.
14. Juan de Jesus Alire.
15. Juan Anto. Valdez.
16. Juan Manuel Martinez.
17. Juan Jose Martinez.
18. Cornelio Lucero.
19. Jesus Ma. Lucero.
20. Maria Morela Pena.
21. Agapito Espinoza.
22. Jose Manuel Torres.
23. Jose Domingo Archuleta.
24. Jose Miguel Gallegos.

(Here follows map marked p. 139 a.)

[Map endorsed as follows:] File 179. 2. Sketch map. Recorded on page 410, vol. 5, Land Claim Records, in the office of the surveyor-general.

140 EXHIBIT B FOR DEFENDANT.

Deposition of Serafin Pena, taken before the surveyor-general of New Mexico February 12, 1875.

Serafin Pena, being by the surveyor-general first duly sworn, on his oath declares:

Question (by Samuel Ellison, attorney for claimant). What is your name, age, occupation, and place of residence?

Answer. My name is Serafin Pena; my age is about fifty years; my occupation is farmer, and my residence is at the town of Petaca, in Rio Arriba County, New Mexico.

Question. Do you know a tract of land in that county known as the Petaca grant? If so, please state what you know about the claim or title to that land generally.

Answer. I know such a tract of land in that county, situated upon the Petaca River, above the town of Servilleta, that river running northwardly into the Ojo Caliente River; the town of Petaca, which contains

about thirty heads of families, standing upon the west bank of the Petaca River and within the said Petaca land grant. I have known the place all my life. The grant has always been settled and occupied, except when on several occasions the inhabitants were driven off by the hostile Indians, though on these occasions they always returned to their homes and avocations there. Said town of Petaca was, as such, in existence at the time of the occupation of New Mexico, in 1846, by the military forces of the United States and at the date of the treaty of Guadalupe Hidalgo, in 1848. I have examined the list of the Petaca settlers and grantees now handed me by the surveyor-general and well remember all of them personally, with very few exceptions, as residents and settlers at said Petaca about forty years ago. Most of them are now dead, but their descendants and successors still live there, and those of them not dead still reside there, and, with their children, cultivate the land. I do not know the boundaries of the Petaca grant, except as I have heard them stated by common report, and do not recollect how I have thus heard them well enough to repeat them now.

Question (by the Attorney-General). Do you know of any mines or mineral-bearing land within said grant, as you understand its limits?

Answer. I know of no mines or mineral-bearing soil therein.

Question. Have you any land within said grant or are you in any wise interested in this claim?

Answer. I have no land therein and am in no manner or degree interested in this claim.

SERAFIN (x) PENA.

Sworn to and subscribed before me this February 12, 1875.

JAMES K. PROUDFIT,
Surveyor-General.

141 COPY OF EXHIBIT C TO TESTIMONY OF PEÑA.

En cumplimiento al desempeño de su deber pasará V. al punto de la petaca á poner en posecion á todos los indebiduos que se anotan en la merced de dha. posecion la que deberá parar en el archibo de su cargo, colocando las suertes que se hallen balidas en las personas que las solositen y que se hallen desamparado rrefullendo la ygualdad en todas las personas y que le pagen sus derechos.

Ojo Caliente, Marzo 20 de 1848.

SABADOR LUCERO, [RUBRICA.]
Prefecto del Rio Arriba.

Sor Alde. D. JOSÉ VICENTE JARAMILLO.

Jusgado del Ojo Caliente, Condado del Rio Arriba.

Luego vista esta orden en el momento mismo que V. vea esta orden, dara V. abiso á todos los CC. que solisitan posecionarse en ese punto de la petaca; que esten prontos para el domingo que contamos 26 de este que rrije por esponerlo asi el Sor. Prefecto y para dar cumplimiento al oficio de V. S., digo a V. que esta rreunion debe ser en ese punto de la serbilleta, haciendo á V. rresponsable á la menor falta que V. tenga en

la enteligencia que los que están propuestos a tomar posecion y no ballan no cuenten con ninguna posecion.

Año del Sor. del mes de marzo 22 de 1848.

(Firmado.) JOSE VTE. JARAMILLO. [RUBRICA.]

Sor. Teniente D. JUAN NEPOMOCENO TRUJILLO.

Sirculor.

Duranes, plaza de los Gallegos del Ojo, cuesta Cieneg a Ancones y Servilleta, ay en ese punto debe de allarse para el domingo.

Luego luego que rreciban esta orden, notificarán á los CC. la noticia el que debarán estar muy prontos en ese punto de la Servilleta para el domingo, todos los que haygan sido posecionados en lo futuro, en el punto de la petaca, por mandarmelo hasi el Sor. prefecto, en la inteligencia que todos los posecionados, como dije, que no ocuran no tienen dro. ninguno en lo porbenir para rreclamar sus posesiones, solo sy se les dará á otros de los que haygan ally presentes: haciendo responsables á los señores oficiales que detengan esta orden y que sea detenida por ellos y no hagan patente á los CC., tendrán que sufrir la pecunia que á my me pueda acignar V. S.

Año del. Sor, Mzo. 23 de 1848.

(Firmado.) JOSÉ VTE. JARAMILLO. [RUBRICA.]

Juez de Paz del Condado de Rio Arriba.

Señores oficiales del Alargon de Cordillera, pase luego luego.

Lista gral. formada en la nueva posecion que comunte. llaman la petaca, echa hoy 27 de marzo del año del Sor. de 1848.

Arreglada al superior decreto del Sor Prefecto D. Salvador 142 Lucero; ha onde me ordena que posecione á los cc. que justamente haygan muerto ó no esten presentes; es asy que habiéndome parado en el primer lindero que consta de la plaza para arriba, accompañado con el juez sesante, D. Vernardo Valdez, y my escribiente, Vte. Abilusca y Cordova, y toda la munisipalidad de cc., y para el esaito cumplimto. di fe, en vos alta, que yba á medir el terreno en nombre del territorio de Nuevo Mexico, y que recibirán aquella concencion en nombre de la Constitucion de los Estados Unidos, etc., y comensó á medirse los posecionados por el Juez de paz sesante D. Vernardo Valdez, de lo que tenia donado desde el año de 1843, y son los siguientes:

C. Mariano Peña	150 vs.
C. Rafael Peña	150 vs.
C. Vartolo Valdez	150 vs.
C. José Sandoval	150 vs.
C. José Franco. Valdez	150 vs.
C. Juan Manuel Olgin	150 vs.
C. Jesus Ma. Varela	150 vs.
C. Gr'biel Vigil	150 vs.
C. José Franco. Gallego	150 vs.
C. Juan Miguel Mestas	150 vs.

Abrebadero comun 50 vs. al frente de la cañada que llaman la dorada y sigue la rruta.

C. Carlos Tores	150 vs.
C. Manuel Anto. Torres	150 vs.
C. Deonicio Torres	150 vs.

C. Jose Manuel Torres ..... 150 vs.
C. Pedro de Ferrera ..... 150 vs.
C. José Gregorio Ruibal ..... 150 vs.
C. José Manuel Lucero ..... 150 vs.
C. Rafael Chaves ..... 150 vs.
C. Victor Chaves ..... 150 vs.
C. Anto. José Chaves ..... 150 vs.
C. José Anto. Martin ..... 150 vs.
C. Franco. Anto. Atencio ..... 150 vs.
C. José Aniseto Martin ..... 150 vs.
C. Quirino Trujillo ..... 150 vs.
C. Desiderio Valdes ..... 150 vs.
C. Juan Anto. Valdes ..... 150 vs.
C. Felipe Jaques ..... 350 vs.
C. Manuel Lujan ..... 150 vs.

y fueron los que posecionó el juez paz sesante, D. Vernardo Valdez y luego comensé yo, Jose Vte. Jaramillo, á posecionar los demas por muerte y ausencia y los doné á los mas necesitados, á saber, los siguientes:

C. José Franco. Gallego ..... 150 vs.
C. José Anto. Valdes ..... 150 vs.
C. Agustin Ortiz ..... 150 vs.
143 C. Anto. Serafin Peña ..... 150 vs.
C. José Anto. Atencio ..... 150 vs.
C. Miguel Alire ..... 150 vs.
C. Pedro Anto. Pacheco ..... 150 vs.
C. Nerio Valdez ..... 150 vs.

En el lindero del C. Nerio Valdez al lindero del C. José Ignacio Valdez, en medio de los dos, constan 55 varas de abrevadero comunes y luego sigue el siguiente:

C. José Ignacio Valdes ..... 150 vs.
C. José Vicente Jaramillo ..... 200 vs.
C. Tomas Aquino Manchego ..... 150 vs.

Otro mas abrebadero comun del sedro que es lindero del C. Jaques del lindero de abajo que consta ser un sedro, desde el sedro es abrebadero asta el peñasco que consta del C. Nepomoseno Trujillo, que se le dió desde hay asta el badito por no haber querido ya nadie, ni por haberles echo la salba de 3 varas, y otros, si, por lo que toca á la plaza; de plaza quedan limitados á 150 varas para que todos los posecionados puedan, con todo dro., domisilio y vecindad tomar sus solares á proporcion de lo que cada uno pueda tocarle por iguales partes y arreglo de lo posecionado, dejando sus frentes libres por el oriente y poniente y de la plaza á abajo queda un arrollo que llaman de Los Apaches, libre para entradas y salidas; y en conclucion de esta lista queda el frente de la plaza por el lado del poniente en beneficio de la misma para entradas y salidas, dejando libres sus chorreras por el rumbo del oriente; se rrepartieron por iguales partes todos los que reciden en la citada plaza, pues este beneficio les serbirá á los recidentes por amparo de sus dros.

Y para que esta en todo tiempo conste que son rrequeridos por la ley, la posecionaron en vos y nombre del territorio de Nuevo Mexico y rrespectando la constitucion de los Estados Unidos y firmando yo y el de mi asistencia, y es el Juez Cesante, hoy dia de la fecha arriba osupra.

Otro sy: á los CC. posecionados en esta Merce con 150 vs. y con los otros qe tengan mas, tendrán qe. gosarlos en nombre del territorio del Nuevo Mexico y la constitucion de los Estados Unidos, pues esta es la dispocision autentica de las autoridades, sesantes y propietarias; y por orden superior se les dió y donó las mensionadas poseciones en la regular

regla de 150 vs. y á linea rrecta desta vanda y la otra para qe. esta gracia tenga fuerza y validacion qe. citan las leyes, la firmamos y la autorizamos con todas las facultades qe. son conferidas para qe. no hayga variacion, ny por otro jues sea vuelta á donar solo por abandono de cinco años ó no querer trabajar en el cumplimiento, beneficio propio, pero entonses por conducto del mayordomo se dará conocimiento á este jusgado para qe. gose otro lo que aquel decceche; y se firmó y dió esta donacion hoy 27 de marzo del año del Señor de 1848.

(Firmado) JOSÉ VTE. JARAMILLO. [RUBRICA.]
Juez de Paz del Condado de Rio Arriba.

ASS.: VTE. ABILUCEA. [RUBRICA.]
VERNARDO VALDÉS, *Juez Cesante.*

144 *Translation of Exhibit C.*

In fulfillment of the discharge of your duty you will go to the point of La Petaca to place in possession all the individuals who are noted down in the grant of said possession, which ought to be in the archive under your charge, giving the lots which are found vacant to those persons who ask for them and who are unprovided, the equality in all the possessions, and that they pay you your fees.

Ojo Caliente, March 20, 1848.

SALBADOR LUCERO, [RUBRICA.]
Prefect of Rio Arriba.

To the Alcalde Don VICENTE JARAMILLO.

Court of Ojo Caliente, of the County of Rio Arriba.

Immediately after seeing this order, at the very moment that you see this order, you will notify all the citizens who ask to be placed in possession at the point of La Petaca to be ready for Sunday, the 26th of the present month, as the prefect so orders it, and in order to give fulfillment to your official communication I state to you that this reunion ought to be at that place of Servilleta, making you responsible for the least failure that you may have, with the understanding that they who have proposed to take possession and who do not go shall not count on any possession.

Year of the Lord of the month of March 22, 1848.

JOSE VICENTE JARAMILLO. [SCROLL.]

To the Lieutenant Don JUAN NEPOMUCENO TRUJILLO.

Circular.

Durancs Plaza de los Gallegos Plaza del Ojo Cueva Cienega Ancones and Servilleta. There, at that point, they should be by Sunday.

As soon as you receive this order you will notify the citizens that they ought to be very prompt at that place of La Servilleta by Sunday; all those who may have been placed in possession in the future, at the place of La Petaca, on account of the prefect so commanding me, with the unde'standing that all those placed in possession, as I stated, who do not attend have no right whatever in the future to claim their possessions,

but these will be given to others of those who may be there present, making the officers responsible if they detain this order; and that it be detained by them and they do not make it plain to the citizens they shall suffer the pecunia which may be assigned to me by his honor.

Year of the Lord, March 23, 1848.

JOSE VICENTE JARAMILLO,
Justice of the Peace of the County of Rio Arriba.

To the officers of the marginal list.

Let it go at once.

145 General list, formed at the new possession which they commonly call La Petaca, made to-day, the 27th of March, of the year of our Lord 1848, in conformity to the superior decree of the prefect, Don Salvador Lucero, where he orders me that I place in possession those citizens who justly may have died or are not present; thus it is that, having stopped at the first boundary, which consists of the plaza, upwards, accompanied by the retiring justice, Don Bernardo Valdez, and my clerk, Vicente Abilucea y Cordoba, and all the municipality of citizens, and for the exact fulfillment I stated in a loud voice that I was going to measure the land in the name of the Territory of New Mexico, and that they shall receive that concession in the name of the Constitution of the United States, etc., and that measurement to the parties placed in possession was begun by the retiring justice of the peace, Don Bernardo Valdez, of that which he had donated from the year 1843, and they are the following:

Citizen Mariano Pena	150 varas
" Rafael Pena	150 varas
" Bartolo Valdez	150 varas
Citizen Jose Sandoval	150 varas
" Jose Francisco Valdez	150 varas
" Juan Manuel Olguin	150 varas
" Jesus Maria Varela	150 varas
" Grabiel Vigil	150 varas
" Jose Francisco Gallego	150 varas
" Juan Miguel Mestas	150 varas
Common watering place	150 varas

opposite the canada which they call La Dorada, and the route continues—

Citizen Carlos Torres	150 varas
" Manuel Antonio Torres	150 varas
" Dionicio Torres	150 varas
" Jose Manuel Torres	150 varas
" Pedro de Herrera	150 varas
" Jose George Ruibal	150 varas
" Jose Manuel Lucero	150 varas
" Rafael Chavez	150 varas
" Victor Chavez	150 varas
Citizen Antonio Jose Chavez	150 varas
" Jose Antonio Martin	150 varas
" Francisco Antonio Atencio	150 varas
" Jose Aniceto Martin	150 varas
" Quirino Trujillo	150 varas
" Desiderio Valdez	150 varas
" Juan Antonio Valdez	150 varas
" Felipe Jaquez	350 varas
" Manuel Lujan	150 varas

and they were those which the retiring justice of the peace, Don Bernardo Valdez, placed in possession; and thereupon I, Jose Vicente

Jaramillo, began to place in possession the others on account of
146 death and absence, and I donated them to the most needy, to wit, the following:

Citizen Jose Francisco Gallego	150 varas
" Jose Antonio Valdez	150 varas
" Agustin Ortiz	150 varas
" Antonio Serafin Pena	150 varas
" Jose Antonio Atencio	150 varas
" Miguel Alire	150 varas
" Pedro Antonio Pacheco	150 varas
" Nerio Valdez	150 varas

At the boundary of the citizen Nerio Valdez to the boundary of the citizen Jose Ignacio Valdez, in midst of the two, appear 55 varas of common watering place, and thereafter follows the following:

Citizen Jose Ygnacio Valdez	150 varas
" Jose Vicente Jaramillo	150 varas
" Tomas Aquino Manchego	150 varas

Another common watering place from the cedar which is the boundary of the citizen Jaquez from the lower boundary, which is known to be a cedar; from the cedar it is a watering place as far as the large rock which is known as that of the citizen Nepomuceno Trujillo, which was given to him from there as far as the little ford on account of no one now having wanted it, neither on account of having saluted them three times and others, indeed, in so far as concerns the plaza; from plaza 150 varas are limited, in order that all the parties placed in possession may with full right, domicile, and vicinage take their lots in proportion to that which may fall to the share of each one in equal parts and according to what is given in possession, leaving their fronts free on the east and west, and below the plaza there is an arroyo which they call Los Apachez, free from entrances and exits, and in conclusion of this list the front of the plaza on the west side remains for the benefit of the plaza itself, for entrances and exits, leaving its chorreras free on the east side. The distribution will be made in equal parts [to] all those who reside at the said plaza, and this benefit shall serve the residents as a protection to their rights.

And in order that this may in all time appear, which are required by the law, they took possession of it by the authority and in the name of the Territory of New Mexico and respecting the Constitution of the United States, and I, the attending witness, and the retiring justice signing to-day, the day of the above date *ut supra*.

NOTE.—The citizens placed in possession in this grant with 150 varas and with the others who may have more shall have to enjoy them in the name of the Territory of New Mexico and the Constitution of the United States, as this is the authentic disposition of the retiring and new officials, and by superior order there was given and donated to them the said possessions in the regular rule of 150 varas and in a straight line on both sides of the stream. In order that this favor may have the force and validity which the laws cite, we sign and authenticate it with all
147 the powers which are conferred, in order that there may be no change and that it may not be again donated by another justice, except on account of abandonment for five years, or on account of not wishing to work in the fulfillment, benefit, proper, but then through the

mayordomo report will be made to this court in order that another may enjoy that which he may reject; and this donation was signed and given to-day, the 27th of March, of the year of our Lord 1848.

JOSE VICENTE JARAMILLO, [SCROLL.]
Justice of the Peace of the County of Rio Arriba.

Attending:

VICENTE ABILUCEA. [SCROLL.]
BERNARDO VALDEZ,
Retiring Justice.

COPY OF EXHIBIT D TO TESTIMONY OF PEÑA.

Lista en qe se comprendieron los agrasiados y posesionados en el resinto de plasa y tereno para guertas o uso qe cada uno estime en la nueva posecion de la petaca por el C. Jose Rafael Peña qe para el efecto lo comiciono el Sor Ald. D. Jose Vicente Jaramillo y recivieron sus terrenos a o de solares de casas con dies varas de tierra para ya el referido uso el dia dies de Junio deste año de 1848 con lo qe cada uno quedo conforme y satisfecho y son como siguen:

Carlos Torres	1
Jose Ml. Lucero	2
Franco. Gallego	3
Juan Ml. Olguin	4
Agustin Ortiz	5
Jose Ruival	6
Quirino Trujillo	7
Juan Anto. Valdez	8
Mariano Peña	9
Bartolo Valdez	10
Gabriel Vigil	11
Quino Manchego	12
Jose Ma. Torres	13
Rafael Peña	14
Jose Anto. Atencio	15
Jesus Ma. Barela	16
Anto. Valdez	17
Serafin Peña	18
Jose Franco. Sandoval	19
Juan Miguel Mestas	20
Franco. Valdez	21
Ml. Antonio Torrez	22

[Jose Inacio Valdez sujete]* a su solar y dose varas de chorreras lo que se conclullo en la peteca hoy 10 de Junio de 1848.

(Firmado) JOSE RAFAEL PEÑA. [RUBRICA.]

Como Assa:
(Firmado) JESUS MA. VARELA. [RUBRICA.]

148 EX. D FOR IDENTIFICATION TO TESTIMONY OF WITNESS JUAN ANTONIO PEÑA.

[Translation.]

List in which were enumerated the grantees and parties who were placed in possession around the plaza and of land for gardens or such use as each one may prefer in the new possessions at La Petaca by the citizen Jose Rafael Peña, who was commissioned for that purpose by the

* Words enclosed in brackets erased in copy.

alcalde, Jose Vicente Jaramillo, and they received their lands, both house lots, as well as ten varas of land for the purpose already referred to, the tenth day of June of this year, 1848, with which each one was suited and satisfied, and they are as follows:

Carlos Torres	1
Jose Manuel Lucero	2
Francisco Gallego	3
Juan Olguin	4
Agustin Ortiz	5
Jose Ruival	6
Quirino Trujillo	7
Juan Antonio Valdez	8
Mariano Peña	9
Bartolo Valdez	10
Gabriel Vigil	11
Quino Manchego	12
Jose Maria Torres	13
Rafael Peña	14
Jose Antonio Atencio	15
Jesus Maria Barela	16
Antonio Valdez	17
Serafin Peña	18
Jose Francisco Sandoval	19
Juan Miguel Mestas	20
Francisco Valdez	21
Manuel Antonio Torres	22

Jose Ignacio Valdez restricted to his building site and twelve varas around it.

Which was concluded at La Petaca to-day, the tenth of June, 1848.

(Signed) JOSE RAFAEL PEÑA. [SCROLL.]

As attending witness:

(Signed) JESUS MARIA VARELA. [SCROLL.]

NOTE.—In the original Spanish the words above translated "Jose Ignacio Valdez restricted" have lines drawn through them in an ink darker than that in which the document is written, as though it had been intended to erase them.

, *anslator.*

149 In the Court of Private Land Claims, Santa Fé, New Mexico, August term, 1896, September 5th, 1896.

ANTONIO SERAFIN PENA ET AL. *versus* UNITED STATES.	No. 99.	La Petaca grant.
L. Z. FARWELL AND M. Z. FARWELL *versus* UNITED STATES.	No. 153.	Petaca grant.
JOSE A. GARCIA *versus* UNITED STATES.	No. 233.	Petaca grant.

Majority opinion of the court, delivered by Sluss, associate justice, September 5th 1896.

This case presents a claim for the confirmation of a grant made by the governor of New Mexico on the 29th day of January, 1836.

The grant was petitioned for by Jose Julian Martinez, who stated in his petition that he petitioned as well for himself as for his father, Antonio Martinez, Francisco Antonio Atencio, and the latter's sons.

The petition was directed to the ayuntamiento of Ojo Caliente, and described the land petitioned for as a tract of public land called the Petaca.

The petition was by the ayuntamiento transmitted to the governor, with the statement that the parties who had formerly had a grant of the same tract had failed to occupy it during the period of twelve years, and recommended that the land be granted to the new applicants, but that the sons of Atencio be not included for the reason that they were minors.

On February 25th, 1836, the governor executed a grant as follows:

"Having seen the action of the ayuntamiento of Ojo Caliente, of date 22nd instant, in which they say there is no objection to granting the applicant and his associates the land mentioned, the former grantees not possessing now any right therein, they having abandoned the same, the alcalde of said place will place those who now apply for the same in possession thereof, in the required form and in conformity with the law on the subject, setting forth the general donation, in which shall necessarily be stated the boundaries of said possession, and without injury to any third party; also binding the grantees to the obligations prescribed by the laws to acquire title, for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom as may be requested of him on payment of his corresponding fees.

PEREZ."

150 Juridical possession of the tract was given by an alcalde on March 25, 1836.

In the act of possession the alcalde states that he proceeded to distribute said land in the presence of the parties interested, giving to each one of those mentioned in the list 150 varas in a direct line, designating to them as their boundaries on the south the entrance to the canoncito and the lands of Jose Miguel Lucero, on the north the Tio Ortiz hill, on the east the Mesa de Tatilla of the Petaca, on the west the boundaries of the Vallecito grant, within which limits the new grantees were located, the grantees mentioned in the annexed list understanding that the pastures, forests, waters, and watering places were in common, and that if any one failed to occupy and cultivate the land within five years or should abandon the tract, such one would forfeit his right, and that being informed of and agreeing to all this, they received the possession. Attached to the act of possession is a list of thirty-six names, denominated "List of the citizens who took possession of the Petaca grant of land, as set forth in the grant on the other side of this." Among the names contained in this list are those of Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio.

The genuineness of the grant and the power of the governor to make it have not been contested on the trial.

The first question presented is, To whom was this grant made? The testimony of Jesus Maria Olguin and Jose Antonio Lucero shows that Jose Julian Martinez and Francisco Antonio Atencio were a committee

on behalf of the proposed settlers to petition for the grant on their behalf.

It was not an unusual thing in Spanish and Mexican custom for one person to prefer a petition for a grant as principal petitioner on behalf of a number of persons contemplating settling a new tract of land.

We know of no Spanish or Mexican law requiring any such tract to be expressed in writing, and we know of no theory of public policy which would prevent the principal petitioner from recognizing the rights of his cosettlers, even though their rights were not expressed in writing.

The action of the alcalde in placing the thirty-six in possession, and the acquiescence in and acceptance of such action on the part of the principal petitioners, is strong confirmatory proof that the principal petitioners, Martinez and his father and Atencio, were acting on behalf of the entire body of settlers.

The grant was not fully made without the act of juridical possession, and the only judicial possession given of the tract as a whole was to the thirty-six settlers shown on the list.

The language of the governor in the granting decree seems to contemplate that the grant was being made for the benefit of a community. He authorized the alcalde to take charge of the general document of distribution, and to give testimonios from it whenever requested, evidently having in mind the law and practice in making colony
151 grants. In our opinion, therefore, the grant originally vested in the thirty-six named in the list constituting part of the grant papers.

The next question is as to whether the grant had been abandoned prior to the treaty of 1848.

The testimony of Serafin Pena, Jesus Maria Olguin, and Jose Antonio Lucero satisfactorily show that from the time of the delivery of judicial possession the original settlers began to occupy, cultivate, and improve the land granted. This occupancy and cultivation was not continuous, nor was the improvement great. The condition of Indian hostilities during all that period necessarily precluded the continuous occupation and cultivation of the land; but there is nothing in the case to show that the settlers did not take the land in good faith and make every reasonable effort to occupy and cultivate it, and the fact that there is now found upon the tract a considerable community in part, at least, descended from those same original settlers ought to remove any doubt upon that subject.

It appears that in 1848, after the American occupation of this country, a number of persons petitioned to be again placed in possession of the tract, some of whom where not original distributees. The fact that a number of the original grantees appeared and asked to be placed in possession in 1848, and sought to avail themselves of American protection against Indians in such possession, is additional evidence that they had not voluntarily abandoned their rights in the land. Two of the men placed in possession in 1848, Juan Antonio Pena and Ponce de Leon Pena, testify that at that time there were no evidences on the land of prior occupancy or cultivation, but we think this is not sufficient to overcome the other evidence in the case of such occupancy and cultivation We are therefore of the opinion that the claim to the land was not abandoned.

The next question is as to the boundaries, and inasmuch as there is no dispute as to any except the north boundary, the question is narrowed to the location of that one.

The act of possession fixed the north boundary at the Tio Ortiz hill. The evidence discloses two hills called by the name Tio Ortiz, one situated near Buckman's mill, which will be referred to as the lower hill, and one near the San Antonio Mountain, which will be referred to as the upper hill.

Sefarin Pena, Jesus Maria Olguin, Jose Antonio Lucero, Jesus Maria Barela, and Juan Isidro Lucero, who had arrived at the age of discretion at the time the grant was made, all testify to facts showing the upper hill to have been the one intended to be described in the act of possession. Barela was the assistant to the alcalde who delivered the possession, and drew up the document for him, and who was intimately acquainted with the locality, testifies that the upper hill was the one in the minds of the grantees and of the alcalde.

These witnesses are corroborated more or less strongly by —
152 the granted tract. This stream from about the location of the lower hill down to the point of the acknowledged south boundary of the granted tract.
—Frank A. Chaves, Agapito Trujillo, Antonio Abeytio Torres, Desidero Ortiz, Presentation Duran, and Ricardo Alarid.

On the other hand, Benigno Trujillo, D. Montoya, Antonio Maria Ortega, Jose Enen. Jaramillo, Casimiro Chacon, and Nestor Martinez testify to facts showing that the lower hill has been known as the Tio Ortiz for many years, while Antonio Maria Ortega, Jose Enen. Jaramillo, Casimiro Chacon, and D. Montoya testify that up to very recent times the upper hill has been known as Cerro Colorado.

In determining the weight of probability as between these two conflicting lines of testimony there are several circumstances proper to be considered:

First. The grant was of a tract which had theretofore been set apart with known boundaries, and which had acquired a distinctive name as a tract, and lay along a small stream of water having the same name as the granted tract. This stream from about the location of the lower hill down to the point of the acknowledged south boundary of the granted tract has ever been known as the Petaca, while above the point of the lower hill the same stream has ever been known by a different name, that of Los Tusas, the same name as that applied to the small community occupying that part, and while below the point of the south boundary of the grant it has ever been known by still another name, that of Cevilleta, the name applied to a small community occupying that part. These facts are shown by the testimony of Frank A. Chaves, Antonio Maria Ortega, and Casimiro Chacon, and are undisputed.

Second. The east boundary of the grant was made the Mesa de Tatilla of the Petaca, which follows the course of this stream of water, and for the most part is a high, precipitous bluff, but a short distance from the stream. The west boundary was made the east boundary of the Vallecito grant, which was the ridge of the watershed lying west of this Petaca stream. The lower hill stands near the stream and between the east and west boundaries, while the upper hill has no connection what-

ever with the granted tract in any view of the case, but is disconnected from it by a distance of three or four miles. It is fair to say that it was not usual to select an object entirely disconnected from the granted tract to serve as a boundary monument, when suitable objects for that purpose could be found in direct connection with the tract.

Third. As has been stated, the east boundary of the tract as granted was the Mesa de la Tetilla of the Petaca, which was the boundary originally expressed in the act of possession. The evidence shows, and the fact is not questioned, that long after the execution of the act of possession that document was fraudulently altered in respect of the east boundary, and the Mesa de la Tetilla of the Petaca was changed to
153 the Arroyo of the Aguaje of the Petaca. If that arroyo had been the true east boundary it would have been a most natural thing to select the upper hill to reach the north boundary if the intention was to extend the grant that far north. But with the Mesa de la Tetilla as the true east boundary it was most natural to select the upper hill to mark the north boundary, even if it had been intended to extend the grant to that distance north. The fact that the document was fraudulently altered in order to constitute the Arroyo de las Aguaje the east boundary, the motive being the obtaining title to a large body of fine pine timber, renders it easily believable that by a like unconscionable act the name of a landmark might be changed so as to serve as a boundary monument in furtherance of the same scheme, and the theory that this has been done finds support in the evidence of the witnesses, who testify that until recent years the upper hill has been known as the Cerro Colorado. Upon a consideration of all the testimony and the circumstances of the case, the majority of the court are of the opinion that the north boundary must be fixed at the lower hill. The majority of the court are of the opinion that the grant must be conformed with boundaries as hereinbefore indicated, and it only remains to consider in whose name the confirmation shall go.

The evidence shows that in 1848 a number of persons took possession of the tract, claiming it under the grant; that among these were a number who were original grantees and distributees in 1836. These latter were certainly owners at that time, and their acceptance of possession in connection with the others and in recognition of their rights in the tract is sufficient to warrant a confirmation in the name of all those who took possession in 1848 for the benefit of all parties in interest.

HENRY C. SLUSS,
Associate Justice.

SEPTEMBER 5th, 1896.

In the Court of Private Land Claims, Santa Fé, New Mexico, August term, 1896.

Cases numbers 153, 99, and 233, for the Petaca grant.

Opinion of Reed, Chief Justice.

In my opinion a preponderance of the evidence shows that the northern boundary of the grant as established by the act of juridical possession is at the point designated in the foregoing opinion as the upper Ortiz hill.

I am also of the opinion that the confirmation should be to the descendants and representatives only of the persons who petitioned for the grant.

SEPTEMBER 5th, 1896.

154 In the Court of Private Land Claims, Santa Fé, New Mexico, August term, 1896.

SEPTEMBER 2nd, 1896.

ANTONIO SERAFIN PENA ET AL. *versus* UNITED STATES.	No. 99. La Petaca grant.
L. Z. FARWELL AND M. Z. FARWELL *versus* UNITED STATES.	No. 153. Petaca grant.
JOSE A. GARCIA *versus* UNITED STATES.	233. Petaca grant.

Dessenting opinion of Murray, Associate Justice.

At the time of this grant, February, 1836, the governor of this Territory had power to make grants to land, but all his power or authority was derived from the law of August 18, 1824, and Executive regulations of November 21, 1828. The powers and duties of the political chief in relation to the disposition of the public domain are specifically defined in said regulations.

Vide Reynolds' Compilation of Spanish and Mexican Land Laws, pages 141, 142, and 143.

Grants of land made by the political chiefs not in substantial compliance with said law and regulations are void for want of power to make them.

It was conceded by counsel for the principal claimant that the grant in this case was not made under the provisions of said law and regulations. It was, however, insisted that where land had previously been granted by competent authority and denounced for failure to comply with the conditions prescribed the title to such lands did not revert to the Government and was not subject to regrant as public domain, but, as in this case, the grant to the petitioners vested them with the title of the former grantees.

Without going into the question as to what would constitute a legal denouncement of land granted, it is sufficient to say that no law of Mexico was referred to in support of the contention of counsel, and I have been unable to find any. It was not certainly the law of Spain in force at the date of the independence of Mexico.

The cedule of 1805 provides, when land is forfeited for failure to comply with the conditions of the grant, the land shall revert to the public domain and be adjudged to whomsoever might denounce it.

Vide Archives, 1180 and 1193.

An examination of the papers constituting the expediente show' conclusively that no attempt was made by the petitioners or the officials to comply with a single provision of said law of August 18, 1824, and

regulations of November 18, 1828, but, on the contrary, it
155 clearly appears to have been an attempt to make a grant under the provisions of a law of Spain in relation to what is known as "community grants." We have had a number of such before us made by the Spanish governors of the Territory prior to the independence of Mexico. The alcalde, following what had been the usual practice prior to the Mexican independence, allotted lands to a number of persons not named in the petition. This could not be legally done under the regulations of 1828. Applicants for land under said regulations were required in their petition to give their "names, country, profession, number, nature, religion, and other circumstances of family or person," * * * "and shall also mark as distinctly as possible and described on a map the land applied for." The petition in this case was made, not to the political chief, but to a town council. If this irregularity was cured by the governor acting on the petition and recommendation of the council, the granting decree directing the alcalde to put the petitioners in possession and to take charge of the general documents of distribution, binding the grantees to the obligations prescribed by law to acquire title, etc., is utterly void. The act of possession is equally void. The entire proceedings of the alcalde were in contravention of the well-settled policy of the Mexican Government in relation to the colonization of the public domain and in direct violation of the law of August 18, 1824, and the regulations of November 18, 1828. The regulations required grants made to private persons or families to be submitted to the territorial deputation for approval. After this was done the governor or political chief was directed to issue to them a title, by virtue of which title they were put in possession. In this case the political chief did not refer the petition to the territorial deputation, but directed an alcalde to put them in possession, and to prescribe to them the conditions on which they could acquire title. In execution of this order of the governor, the alcalde proceeded to divide the land up into small lots, laid off a plaza or town site, and not only put the petitioners in possession, but a large number of other persons who the governor had never heard of, so far as the papers in this case show, and then turned over the petition, granting decree, and act of possession to one Jesus Maria Barela (one of the witnesses to the act of possession), and, so far as we are advised from the record and testimony in this cause, neither the governor nor any other officer of the Mexican Government were ever informed of the action of the alcalde in the premises. The grant was never filed in the archives of Mexico or records, as required by law. On the contrary, the testimony show that the original petition, grant, and act of possession were in the possession of one Jesus Maria Barela, one of the original allottees, from the time the possession was given, in 1836, up to a short time before the claim was filed in the office of the surveyor-general, in 1875.

In the case of Peralte versus The United States, 3 Wallace, at page 440, Mr. Justice Davis, speaking for the Supreme Court of the United States, said:

"The colonization regulations of 1828 constitute the laws and usages by which the validity of a Mexican title is to be determined.
156 * * * But the important fact to be noticed is that a record was required to be kept of whatever was done. This record was

a guard against fraud and imposition, and enabled the Government to ascertain with accuracy what portion of the public lands had been alienated. The record was the grant, and without it the title was not divested. The governor was then required to give a document to the party interested, which was evidence of title, and enabled him to get possession, but this 'titulo' did not divest the title unless record was made in conformity with law."

"Written documentary evidence, no matter how formal and complete or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed. But it may be said that the archives of the country may be lost or destroyed, and, if so, that the party interest should not suffer. This is true, and if the claimant can show to the satisfaction of the court that the grant was made in conformity to law and recorded, and that the record of it has been lost or destroyed, he will then be permitted to introduce secondary evidence of it, but the absence of record evidence is necessarily fatal unless that absence can be accounted for."

In the case of Antonio Barreyesa, administrator, etc., versus The United States, volume 23, Lawyers' Co-operative edition, Supreme Court Reports, page 913, Chief Justice Waite, speaking for the court, said:

"Notwithstanding the great ability with which this cause has been argued before us in behalf of the appellant, we are unable to distinguish it from a large number of cases to be found in our reports in which we have felt compelled to decide adversely to the claims made under alleged Mexican grants because it did not appear that a grant from the Mexican Government had been deposited and recorded in the proper public office, among the public archives of the Republic. U. S. versus Cambustion, 20 Howard, 64; U. S. versus Castro, 24 Howard, 349; U. S. versus Knight's Administrator, 1 Black, 251; Peralta versus The U. S., 3 Wallace, 440. The decree of the circuit court is therefore affirmed upon the authority of those cases."

This decision was rendered December, 1876, and approves the Peralta Case and other cases decided by that court where the same question was involved. It seems to me that those authorities are directly in point and are conclusive against the validity of the grant in this cause.

These decisions and many others to the same effect were made under the very liberal provisions of the act of March 3rd, 1851, to settle private land claims in California. The commission created by that act and the courts were governed not only by the provisions of the treaty of Guadalupe Hidalgo, but also by the "law, usages, and customs of the Government from which the claim is derived, the principles of equity, etc."

It will be noticed that the words "usages and customs and the principles of equity" in the act of 1851 are not in the act of March 3rd, 1891, and it is fair to presume that they were intentionally left
157 out by Congress. It is certainly clear that this court can not look to the usages and customs of the government from which any claim is derived without disregarding the plain provisions of the act of 1891. Under the provisions of said act of 1891 the court is prohibited from allowing any claim unless it shall appear "to be upon a title not

only lawfully and regularly made by the Government of Spain and Mexico or from a State of Mexico having lawful authority to make grants of lands," but it must be made to appear that the claimant could have gone into the court of the former governments and asked that as a matter of right (not mere grace or favor) that his claim be made perfect if the United States had not acquired the territory. It is not claimed by a majority of the court that the alleged grant in this case *id* anything more than an equitable one. As to whether or not the granting documents prescribed by article eight of the regulations of 1828 when delivered to the grantee constitutess his title without the same being recorded is not a question in this case, as it is not even claimed that any of the papers constituting the expediente were ever submitted to the provincial deputation. There is nothing in this case to justify the presumption that the governor did his duty, but, on the contrary, it affirmatively appears that he did not.

A satisfactory preponderance of the testimony, together with the well-known condition of the country on account of the hostility of the Indians, show' that the land attempted to be granted in 1836 was never occupied until after the allotments were made in March, 1848, but, on the contrary, was abandoned. Jesus Maria Barela and others, who were allotted land in 1836, were present and accepted allotments made by the alcalde in 1848, and without objection allowed portions of the land given to others who were in no way interested in or connected with the grant of 1836. I deem it unnecessary to cite authorities to show that the action of the alcalde in 1848 conferred no right or title to the land allotted. It is insisted by counsel that the grantees were excused from occupying the land on account of the hostility of the Indians. The testimony shows that the Indians were hostile at the date of the grant. That fact having been known to the grantees, it affords no excuse for their failure to comply with the conditions of the grant.

Vide De Villmout versus U. S., 13 Howard, 261; U. S. versus Kingsley, 12 Peters, 484.

This claim is by no means free from suspicion. It was not presented to the surveyor-general for more than twenty years after it might have been presented under the provisions of the act of 1854. The grant came from the hands of one of the claimants, Jesus Maria Barela, and when presented to the surveyor-general the east boundary of the grant had been changed, evidently with a view of enabling the claimant to obtain title from the Government to one hundred and fifty thousand acres of land not embraced within the boundaries of the grant. This attempted fraud is in no way explained. Looking at this case as it stood at the date of the treaty of Guadalupe Hidalgo, it is without merit and
158 not one that the United States is in any way bound to recognize and confirm. We can not consider equities which purchasers of the land may have by reason of the payments of large sums of money in good faith subsequent to the treaty.

For the foregoing reasons the claim should be rejected and the petition dismissed.

WILLIAM W. MURRAY,
Associate Justice.

In the Court of Private Land Claims, November term, 1896.

ANTONIO SERAFIN PENA *vs.* THE UNITED STATES.	No. 99.	Claims for the Petaca tract of land, consolidated and tried as one case.
L. Z. AND M. Z. FARWELL *vs.* THE UNITED STATES.	No. 153.	
JOSE A. GARCIA *vs.* THE UNITED STATES.	No. 233.	

Decree.

The above-entitled causes, number' 99, 153, and 233, respectively, on the docket of this court, having been by a previous order of the court consolidated, coming on to be heard as one case before the court, the said petitioners being represented by T. B. Catron, L. B. Prince, and Edward L. Bartlett in No. 153, by G. Hill Howard in No. 99, and C. A. Spiess in No. 233, the Government being represented by Matt. G. Reynolds and S. Burkhart, its counsel, and the pleadings and proofs in all of said cases having been submitted to the court, and the argument of counsel being heard thereon, and the court having fully considered the same and being fully advised in the premises, upon full legal proof and hearing finds for the petitioner; and

It is hereby ordered, adjudged, and decreed by the court now here that the claim of said petitioners to the Petaca tract or grant of land be, and the same is hereby, confirmed to the petitioners, as hereinafter set out.

That the title and claim of the complainants in and to the said tract of land, as hereinafter described, is a good and valid one as against the United States under and by virtue of the provision and stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe Hidalgo on the 2d day of February, in the year of our Lord 1848, and the colonization law of the Republic of Mexico of August 18, 1824, and the rules and regulations of November 21, 1828, and the title thereto is hereby confirmed to those persons who in the year 1848 were placed in possession of the said Petaca tract,
and whose names are Mariano Pena, Rafael Pena, Bartolo Valdez,
159 Jose Sandoval, Jose Francisco Valdez, Juan Manuel Olguin, Jesus Maria Varela, Grabiel Vigil, Jose Francisco Gallego, Juan Miguel Mestas, Carlos Torres, Manuel Antonio Torres, Dionisio Torres, Jose Manuel Torres, Pedro de Herrera, Jose George Ruibal, Jose Manuel Lucero, Rafael Chavez, Victor Chavez, Antonio Jose Chavez, Jose Antonio Martin, Francisco Antonio Atencio, Jose Aniceto Martin, Quirino Trujillo, Desiderio Valdez, Juan Antonio Valdez, Felipe Jaquez, Manuel Lujan, Jose Francisco Gallego, Jose Antonio Valdez, Agustin Ortiz, Antonio Serafin Pena, Jose Antonio Atencio, Miguel Alire, Pedro Antonio Pacheco, Nerio Valdez, Jose Ignacio Valdez, Jose Vicente Jaramillo, Tomas Aquino Manchego, Nepomuceno Trujillo, their heirs, descendants, and successors in interest and title in and to the tract of

land known as the Petaca, situated in the counties of Taos and Rio Arriba, in the Territory of New Mexico, containing about thirty-seven thousand acres of land, more or less, and bounded on the north by the Tio Ortiz hill, which hill is situated on the west side of the Petaca River, in the valley of Las Tusas, and a short distance below the settlement of the same name; on the east by the "Mesa de la Tetilla de la Petaca," being the first mesa east of the Petaca River; on the west by the east boundary of the "Vallecito" grant, and on the south the entrance to the canoncito and the lands of Jose Miguel Lucero.

It is further adjudged and decreed that the said private land claim, the subject of this suit, is a valid claim against the United States of America for the land included within the natural boundaries above set forth, provided the same shall in no event exceed eleven square leagues, and should the land included within said natural boundaries prove to exceed eleven square leagues, on survey to be made pursuant to this decree, then the eleven square leagues confirmed to said parties by this decree shall be selected and located by the plaintiffs or their attorneys, as they may see fit, out of all or any part of the land situate within the limits last above designated of the said granted tract of land, the title in and to the said tract being hereby established and confirmed in the above-named confirmees, their heirs, successors, and assigns forever, free and clear of any claim or demand against the same on the part of the United States, except in this: That this decree of confirmation shall not and does not confer upon the original grantees, their heirs, assigns, and legal representatives, any right or title to any gold, silver, or quicksilver mines or minerals of the same situate in, upon, or within the premises hereinbefore described, all such mines and minerals remaining the property of the United States, and the plaintiffs pray and appeal, which is allowed.

JOSEPH R. REED,
Chief Justice.

And be it further remembered that thereafter, to wit, on the 2d day of January, A. D. 1897, a stipulation was filed in the office of the clerk, which said stipulation is in the words and figures following to wit:

160 In the Court of Private Land Claims, November term, 1896.

ANTONIO SERAFIN PENA *vs.* THE UNITED STATES.	No. 99.	Claims for the Petaca tract of land, consolidated and tried as one cause.
L. Z. & M. Z. FARWELL *vs.* THE UNITED STATES.	No. 153.	
JOSE A. GARCIA *vs.* THE UNITED STATES.	No. 233.	

It is hereby stipulated and agreed in the three above-entitled causes that on the trial thereof the plaintiffs and petitioners in each presented to the court sufficient evidence of interests in the tract of land claimed

therein to entitle them to present and prosecute said actions, and that the deeds and mesne conveyances presented on the trial need not be included in the transcript of said causes on appeal as evidence of such interests.

EDWARD L. BARTLETT,
Solicitor for Petitioners.
MATT. G. REYNOLDS,
U. S. Attorney, for the Defendant.

In the Supreme Court of the United States.

L. Z. & M. Z. FARWELL, APPELLANTS,
vs.
THE UNITED STATES OF AMERICA, APPELLEES. } No. . Assignments of error.

Now come L. Z. & M. Z. Farwell, the above-named appellants, and say that there is manifest error in the record, proceedings, decision, and decree of this cause as follows, viz:

1st. That the Court of Private Land Claims erred in holding and decreeing that the grant prayed for in appellants' petition enured to the benefit of all the settlers upon the land in question who were placed in possession of the Petaca tract and named in said decree in the year 1848.

2nd. That said Court of Private Land Claims erred in not decreeing the title to said grant to said Petaca tract to the appellants as successors in interest of the original petitioners for said tract, viz, Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, they being the persons to whom the said grant was made by the governor of New Mexico and who petitioned for the same.

3rd. The said Court of Private Land Claims erred in decreeing that the said grant so confirmed should in no event exceed eleven square leagues and restricting the said grant, which was made as "a tract" and by boundaries of natural objects, to said limit of eleven square leagues to be selected out of the area embraced in the grant limits.

161 4th. That the Court of Private Land Claims erred in locating the "Tio Ortiz" hill in its decree at the place indicated therein, such localities being contrary to the call for the north boundary in the original grant and the evidence in the trial as to its location.

5th. The said Court of Private Land Claims erred in locating the east boundary of said grant in its decree as the "Mesa de la Tetilla de la Petaca," such not being the boundary called for in such grant, and being contrary to the testimony adduced at the trial of said cause.

6th. The said Court of Private Land Claims erred in not finding the title to said grant to be in the heirs, descendants, and representatives of Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, who originally petitioned therefor and to whom the grant was made, and to the full extent and by the boundaries claimed in their said petition in the grant and act of juridical possession.

7th. The said Court of Private Land Claims erred in decreeing the title to said tract and grant to persons who were not before said court, had not presented any petition therefor, and who, if they ever had any right, were barred thereof by reason of not having presented their petition to said court therefor in the time prescribed by the act creating said court, viz, within two years from March 3, 1891.

8th. The said Court of Private Land Claims erred in decreeing the title to said tract to be in the persons named in its decree, who were placed in possession without any authority of law and after the date of the treaty of Guadalupe Hidalgo.

For which several reasons appellants pray that said decree of said Court of Private Land Claims may in all things be reversed, vacated, set aside, and so modified as to conform to the law and testimony, and that the appellants may have all other relief in the premises that they may be entitled to have in equity and justice.

L. Z. & M. Z. FARWELL,
Appellants.

L. B. PRINCE,
G. B. CATRON, and
E. L. BARTLETT,
Solicitors for Appellants.

Citation on appeal to Supreme Court.

UNITED STATES OF AMERICA, ss.

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, to wit, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein L. Z. & M. Z. Farwell are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

162 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,
Associate Justice Court of Private Land Claims.

(Endorsed:) No. 153. In Court Private Land Claims. L. Z. & M. Z. Farwell vs. The U. S. Citation on appeal.

THE UNITED STATES OF AMERICA,
Territory of New Mexico:

I, E. L. Hall, marshal of the United States for the Territory of New Mexico, do hereby certify that I received this writ on the 18th day of January, A. D. 1897, within the said Territory of New Mexico, and executed the same on the 19th day of January, A. D. 1897, at Santa Fé, New Mexico, by then and there delivering a true copy of this writ to Wm. H. Pope, special assistant to the Attorney-General for the preparation and defense in cases before the Court of Private Land Claims.

E. L. HALL,
U. S. Marshal for the United States for the Territory of New Mexico.

Fees, $2.00.
Received of E. L. Bartlett, att'y, on the 18th day of January, 1897.
E. L. HALL.

163 *Appeal and allowance.*

UNITED STATES OF AMERICA, ss.

Court of Private Land Claims, Santa Fe district.

ANTONIO SERAFIN PEÑA, L. Z. AND M. Z. Farwell, Jose A. Garcia, et al., plaintiffs and appellees,
vs.
THE UNITED STATES, DEFENDANT AND appellant.

The above-named defendant, The United States, considering itself aggrieved by the decree entered on the first day of December, 1896, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the act of Congress establishing this court, approved March 3, 1891, was not made in said cause within sixty days after the rendition of judgment therein, but was made on March 9, 1898.

MATT. G. REYNOLDS,
U. S. Attorney, for Defendant and Appellant.

And now, to wit, on March 9, 1898, it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court was not made within sixty days after the rendition of the judgment therein, but was made on, to wit, the ninth day of March, 1898.

It is ordered that an appeal be, and hereby is, now allowed, as prayed for.

WILBUR F. STONE,
Associate Justice.

(Endorsed:) Appeal and allowance filed March 9th, 1898. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

164 *Appeal and allowance.*

UNITED STATES OF AMERICA, ss.

Court of Private Land Claims, Santa Fe district.

ANTONIO SERAFIN PEÑA, L. Z. & M. Z. FARwell, Jose A. Garcia et al., plaintiffs and appellees,
vs.
THE UNITED STATES, DEFENDANTS AND appellants.
Causes 99, 153, and 233.

The above-named defendant, The United States, considering itself aggrieved by the decree entered on the first day of December, 1896, in

the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the act of Congress establishing this court, approved March 3, 1891, was not received by the Attorney-General within sixty days next after the rendition of judgment therein, but was made on March 9, 1898, and was received by the Attorney-General on March 25, 1898.

MATT. G. REYNOLDS,
U. S. Attorney, for Defendant and Appellant.

And now, to wit, on April 14, 1898, it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court, was not received by the Attorney-General within sixty days next after the rendition of the judgment therein, but was made on, to wit, the ninth day of March, 1898, and was received by the Attorney-General on March 25, 1898.

It is ordered that an appeal be, and hereby is, now allowed as prayed for.

WILBUR F. STONE,
Associate Justice.

(Endorsed:) Appeal and allowance. Filed April 14, 1898. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

165 *Citation on appeal to Supreme Court.*

UNITED STATES OF AMERICA, ss.

The President of the United States to Antonio Serafin Pena, L. Z. Farwell & M. Z. Farwell, and Jose A. Garcia, et al., claimants in cases 99, 153, and 233 in the Court of Private Land Claims, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit: Sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims in cases numbered 99, 153, and 233 in said Court of Private Land Claims, wherein the United States is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourteenth day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

WILBUR F. STONE,
Asso. Justice, Court of Private Land Claims.

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees, this 20th day of April, 1898.

G. HILL HOWARD,
Attorney for Appellees and Claimants in Case No. 99.

EDWARD L. BARTLETT,
Attorney for Appellees and Claimants in Case 153.

CHAS. A. SPIESS,
Attorney for Appellees and Claimants in Case 233.

Citation on appeal filed April 20, 1898. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

166 I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing one hundred and sixty-six (166) pages contain a full, true, and perfect transcript of record entries and proceedings and all of the files and papers in the consolidated cause lately pending in said court, in which Antonio Serafin Peña et al. were plaintiffs and the United States of America was defendant, as the same appears of record and in file in my office.

Witness my hand and the seal of said court, at my office, in Santa Fe, New Mexico, this 25th day of April, A. D. 1898.

[SEAL.]

JAMES H. REEDER,
Clerk, C. P. L. C.

By IRENEO L. CHAVES,
Deputy Clerk, C. P. C.

167 The foregoing transcript of record having been presented to me by the United States attorney for the Court of Private Land Claims, and having on March 25, 1898, received and considered his report in this case recommending the appeal thereof by the United States, and the same having been approved, it is therefore directed that this transcript be filed in the office of the clerk of the Supreme Court of the United States and this case be docketed in said court.

JOHN W. GRIGGS,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, May , 1898.

(Indorsement on cover:) Case No. 16868. Court of Private Land Claims. Term No. 293. The United States, appellant, *vs.* Antonio Serafin Pena, L. Z. Farwell and M. Z. Farwell, and Jose A. Garcia et al. Filed May 5th, 1898.

No. 293, 72.
Br. of Atty. Gen. (Richards
Reynolds) for Appt. (me
Filed Oct. 14, 1898.

Office Supreme Court U. S.
FILED
OCT 14 1898
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
SERAFIN PENA, L. Z. AND M. Z. FARWELL, and Jose Garcia, et al., appellees.
No. 293.

APPEAL FROM COURT OF PRIVATE LAND CLAIMS.

BRIEF OF THE UNITED STATES IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS APPEAL.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
SERAFIN PENA, L. Z. AND M. Z. FARWELL, and Jose Garcia, et al., appellees.
No. 293.

APPEAL FROM COURT OF PRIVATE LAND CLAIMS.

BRIEF OF THE UNITED STATES IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS APPEAL.

The first ground of the appellee's motion is that the appeal on behalf of the United States was not taken within the time required by law; that is, that the decree was entered in the Court of Private Land Claims on December 1, 1896, and the government's appeal was not allowed until April 14, 1898.

The second ground stated is that, although the law providing for appeals on behalf of the United States from decisions of the Court of Private Land Claims saved to it the right of appeal to this court for six months after

the receipt by the Attorney-General of the report of the United States attorney for the Court of Private Land Claims, in case such report was not received by him within sixty days after the entry of the decree, it appears by the record that the report was not received by the Attorney-General until March 25, 1898, and that, therefore, the government had waived its right of appeal.

The third ground stated is that there does not appear in the record any assignment of errors or prayer for reversal as required by sections 997 and 1012, Revised Statutes of the United States.

The fourth ground stated is that the Court of Private Land Claims consists of a chief justice and four associate justices, and that the allowance of appeal to the United States and citation thereon was not signed by the chief justice of said court, but by Wilbur F. Stone, one of the associate justices thereof, he having no right or power to do so.

I.

The allowance of appeal, the citation, and the certificate of the Attorney-General show that this appeal is within the letter of the law.

Upon the entry of the decree by the Court of Private Land Claims, it appears that the plaintiffs in the three cases involving this one claim, which were ordered consolidated and tried as one by the court (R., 424–25), prayed, and were allowed an appeal (R., 145); that thereafter, on January 15, 1897, a citation directed to the United States, unnecessarily sued out by plaintiffs' counsel, was signed by Wilbur F. Stone, associate justice

of the Court of Private Land Claims (R., 147), and the same was served by the United States marshal for the Territory of New Mexico on William H. Pope, special assistant to the Attorney-General for the prosecution and defense of cases pending in the Court of Private Land Claims, on January 18, 1897 (R., 147).

The report of the United States attorney in this case was not made to the Attorney-General until March 9, 1898, and was not received by him until March 25, 1898 (R., 150).

Upon the application of the United States attorney, Mr. Associate Justice Stone allowed an appeal on behalf of the government, and citation was signed by him on March 9, 1898 (R., 147, 148).

Thereafter, on April 14, 1898, another citation was signed by Mr. Associate Justice Stone, on the application of the United States, covering all the claimants in the consolidated causes Nos. 99, 153, and 233 in the Court of Private Land Claims, service of which was acknowledged on April 20, 1898, by attorneys representing all the claimants before the court (R., 149, 150), and the same was filed in the office of the clerk of the Court of Private Land Claims on the same day (R., 150). It is shown by this application and allowance that the report of the United States attorney in the case had not been received by the Attorney-General within sixty days next after the entry of the decree, but that it was made on March 9, 1898, and received by him on March 25, 1898 (R., 148–50).

The transcript was furnished the Attorney-General, and by proper indorsement thereon he directed that it be

filed with the clerk of this court, which was done on May 5, 1898 (R., 150).

So that, on the face of the record at least, the appeal in this case is within the letter of the law in reference to appeals from the Court of Private Land Claims to this court,—that is, the statement in writing, which by section 9 of the act creating the Court of Private Land Claims (26 Stats., 854) is to be made to the Attorney-General by the United States attorney, was not received by him within sixty days next after the rendition of judgment, and hence, the right of appeal on behalf of the government continued until the expiration of six months after the receipt of such report.

The action of the United States attorney in not making his report to the Attorney-General within the sixty days after rendition of judgment, was approved by the Attorney-General; the reasons for the delay were stated to him and this course received his approval. It would seem, therefore, that the conduct of the United States attorney in the matter of his report in this case had passed the review and received the approval of the only authority authorized by law to determine the propriety of the action of the United States attorney.

The statute evidently contemplated that cases might arise wherein the United States attorney would fail to report within the period, and the Attorney-General receive the same within the sixty days after the entry of the decree, and it is not unreasonable to assume that the act also contemplated the protection of the interests of the United States under many supposable conditions. As will be referred to later on, the wisdom of Congress

in providing that the right of appeal should not be lost to the government until after the report of the United States attorney had been in the hands of the Attorney-General, will be demonstrated by the circumstances of the present case.

The decree in this case was entered on December 1, 1896, (although the date of its entry is not set forth in the record); the report of the United States attorney was received by the Attorney-General on March 25, 1898, (R., 148–150); the final allowance of appeal and citation was signed by Mr. Associate Justice Stone on April 14, 1898, and filed in the office of the clerk of the Court of Private Land Claims on April 20, 1898 (R., 149, 150), very considerably within the period of six months from the date of receipt by the Attorney-General of the report of the United States attorney. It would, therefore, appear that the appeal of the government in this case is within the letter of the law.

II.

The United States attorney for the Court of Private Land Claims has no authority to waive, nor power to forfeit, by any act of his, the right of appeal on behalf of the government; consequently, even had it been withheld for that express purpose, the failure of the United States attorney to report to the Attorney-General within sixty days after the rendition of judgment, as provided by section 9 of the act, does not deprive the government of any of its rights. The only official of the government who has authority to waive its right of appeal, or by his act to forfeit it, is the Attorney-General.

In order that the court may understand that the course pursued by the United States attorney with reference to his report in the case, which was subsequently ratified and approved by the Attorney-General, does not merit the criticism which counsel accords it in his brief, and instead of growing out of neglect, was of studied purpose designed to meet just such a condition of affairs as afterwards arose, the following circumstances are called to the attention of the court.

The decree entered by the Court of Private Land Claims in this case on December 1, 1896, confirmed in part and rejected in part the land sued for. In open court an appeal was prayed by the claimants and allowed as part of the decree (R., 145), and subsequently that appeal was properly prosecuted in this court to the extent of printing the record at a very large expense to them, and was placed on the docket of this court for the October term, 1897, as No. 307, *L. Z. and M. Z. Farwell, appellants*, v. *The United States*. At the time the decree was entered in the trial court and the appeal taken, there were pending on appeal in this court from the Court of Private Land Claims three cases involving fundamental legal questions pertinent to this case, and decisions in which would very materially affect and determine the ultimate result of this appeal, and whether the government would be justified in prosecuting an appeal on its behalf in the present case. These cases were: *United States* v. *Santa Fe* (165 U. S., 715); *United States* v. *Sandoval, San Miguel del Bado Grant* (167 U. S., 278), and *Rio Arriba, etc., Co.* v. *United States, Cañon de Chama Grant* (167 U. S., 298), involving the status of the titles

to lands which were alleged to have been granted or set aside for the formation of cities, towns, and communities under Spanish and Mexican laws. (See petition on which the case was tried, R., 1–6). If the government's contentions were substantially sustained, then the grant involved in the appeal by the plaintiffs would not be entitled to confirmation at all. Were the contrary view taken by this court in said cases, then the claimants in the present case might be entitled to a confirmation of their grant to the extent of the boundaries actually found by the court, not exceeding, however, a total quantity of 11 square leagues.

Under the provisions of section 9 of the act creating the Court of Private Land Claims (26 Stats., 854), when either party shall appeal the case to this court, all questions of law and fact presented by the record or involved in the cases are open for determination by it. The same section provides that the court shall try the case *de novo*, may amend the proceedings below as truth and justice may require, and its decision shall be final and conclusive. Although the provisions of this section were held in the case of the *United States* v. *Coe* (155 U. S., 76) not to be mandatory upon this court, yet, owing to the general powers of the court, relieved in their construction and application so far as this special act is concerned, the case was left open by the act itself for such proceedings and such determination as this court in its wisdom might deem proper. Bearing this provision in mind, it may be seriously doubted whether the *ex parte* dismissal of their appeal by the Farwells alone, without notice to or consent of co-appellants or the United States

should have been allowed, and probably would not, had the attention of this court been called to the condition of the record.

There were three distinct petitions filed in the Court of Private Land Claims, praying for a confirmation of this grant, and the said cases were consolidated and tried as one (R., 24, 25), as they all involved the validity of the same grant. The appeal allowed in open court, and embodied in the decree of confirmation (R., 145), was necessarily allowed to all the claimants in the three cases consolidated, and all were appellants in case No. 307, October term, 1897, referred to. It seems, however, the Farwells, claimants in one of the three cases consolidated, filed their motion to dismiss the appeal, which was allowed on February 21, 1898. This motion and its indorsements are as follows:

In the Supreme Court of the United States, October term, 1897. Term No. 307.

L. Z. AND M. Z. FARWELL, appellants, v. THE UNITED STATES.	Case No. 16493. Appeal from the Court of Private Land Claims.

Now come the above appellants, L. Z. and M. Z. Farwell, by Edward L. Bartlett, of Santa Fe, New Mexico, their solicitor, and say that they will not further prosecute their said appeal in said case, and pray that the same may be dismissed.

L. Z. AND M. Z. FARWELL,
Appellants.

By (signed) EDWARD L. BARTLETT,
Their Solicitor.

(Endorsed:) Case No. 16493. Supreme Court U. S., October term, 1897. Term No. 307. L. Z. and M. Z. Farwell, appellants, vs. The United States. Authority of appellants to dismiss appeal. Office Supreme Court U. S. Filed Feb. 18, 1898. James H. McKenney, clerk.

The record was printed by the appellants, and possibly may have been paid for by Farwell, but nothing appears to show any authority on the part of the Farwells or their counsel to represent the other appellants and plaintiffs below. The question as to whether the appeal by the plaintiffs below is not still in this court will be noticed later.

Believing the appeal properly lodged here by the plaintiffs could not be dismissed as a matter of right, especially under the form of the decree of confirmation, yet if the decision of the fundamental questions involved in the three cases before mentioned should sustain the government's theory, and it should afterwards be determined by the appellants to dismiss their appeal to avoid the effect thereof and this court should hold they were so entitled, the rights of the government could be protected by a report then being made to the Attorney-General and prosecution of an appeal on its behalf under his direction and with his approval. No report was made in writing until March 9, 1898, and received by the Attorney-General March 25, 1898 (R., 148–150).

It is proper to observe the dismissal of the appeal by two of the appellants (Farwells) was filed on February 18, 1898, and under the usual practice called to the attention of the court by the clerk and dismissed on February 21, 1898.

No motion or suggestion was made to this court looking to the reinstatement of the original appeal; but deeming the fair and substantial rights of the government as well as the claimants could best be preserved by taking the course adopted by the United States attorney, which action was approved by the Attorney-General, the report was made, the appeal allowed, and citation issued and served upon attorneys of record of all the plaintiffs below, and filed with the clerk, all within sixty days after dismissal by the Farwells, much to the discomfort and disappointment of counsel for L. Z. and M. Z. Farwell.

That the United States attorney correctly construed his duty under the circumstances is demonstrated by the action of appellees (Farwells) in now seeking to have the government's appeal dismissed.

The circumstances and reasons for the delay in making the report by the United States attorney are proper matters to be submitted to the Attorney-General.

It is evident Farwell's counsel was not solicitous about the performance of the duty of the United States attorney, so as to foreclose any right of appeal on its part, before he undertook to avoid the effect of the decisions of this court in the Santa Fe, San Miguel del Bado, and Cañon de Chama grants, otherwise he might have inquired of the Attorney-General whether the report had been made, and if not the reasons therefor, and he no doubt would have been informed. He would also have been informed that the appeal then pending in this court by his clients and others must be presumed to have been taken and prosecuted in good faith, and under it all ques-

tions should be determined, both of law and fact, and such a decree entered "as truth and justice may require;" and that his clients could not be prejudiced, unless they assumed to avoid the consequences involved in their appeal by obtaining a dismissal without notice to, and an opportunity to be heard in opposition by, the United States, in which case the appeal would be taken by the United States very promptly.

Those having in charge claims in which decrees of confirmation have been entered need not suffer by any failure or neglect on the part of the United States attorney to report, when they are satisfied with the decree and are not seeking or desirous of modifying the same by this court on appeal.

At the end of the six months after entry of the decree, they can apply to the clerk for a certification of the decree to the Commissioner of the General Land Office and upon failure or neglect to do so, their way is clear to the Attorney-General for peremptory direction to the United States attorney. The criticism on the action of the United States attorney comes too late to avail the Farwells anything and enable them to avoid the safegnard attempted to be secured within the law by the representatives of the government.

The fundamental questions involved in this case having been determined substantially in accordance with the theory of the government in the Santa Fe, etc., cases, the unexpected but anticipated partially happened. The appeal taken by the plaintiffs below was dismissed by two appellants without notice to their co-appellants or the United States (appellee).

It is submitted that the United States attorney properly construed his duty in this case, the Attorney-General has approved his action, and the real effect of this appeal is to bring L. Z. and M. Z. Farwell before this court for final determination of their rights, if any, to any portion of the Petaca grant; the other claimants are still before this court on their appeal, not having asked or moved that the same be dismissed.

If the United States attorney has misconstrued his duty, and this appeal, under the circumstances, although within the letter of the law, should be dismissed, still it is contended the appeal on behalf of the other plaintiffs below is still here and should be reassigned to the docket and the dismissal by the Farwells should be set aside.

Section 9 of the act is as follows:

> SEC. 9. That the party against whom the court shall in any case decide—the United States, in case of confirmation of a claim, in whole or in part, and the claimant, in case of the rejection of a claim, in whole or in part—shall have the right of appeal to the Supreme Court of the United States, such appeal to be taken within six months from date of such decision, and in all respects to be taken in the same manner and upon the same conditions, except in respect of the amount in controversy, as is now provided by law for the taking of appeals from decisions of the circuit courts of the United States. On any such appeal the Supreme Court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme

> Court thereon shall be final and conclusive. Should no appeal be taken as aforesaid the decree of the court below shall be final and conclusive. * * *

It is insisted that no cross-appeal was necessary under this section. An appeal properly lodged in this court either by the claimants or the United States vested this court with jurisdiction of the subject-matter and persons to be proceeded with in conformity with the provisions of the act and the rules of this court. The confirmation was for part only of the claim and was a rejection of a part, so that both were entitled to an appeal; but the claimants having taken their appeal in open court, and properly perfected it, there can be no good reason why the United States should also appeal.

It was not necessary for the United States to take a cross appeal in order to avoid the effect of the confirmation of a part of the claim. Nor would it have been necessary, had the United States appealed, for the claimants to have prosecuted a cross appeal to avoid the effect of the rejection of a part of the claim.

> SEC. 9. * * * On any such appeal the Supreme Court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive. Should no appeal be taken as aforesaid the decree of the court below shall be final and conclusive. * * *

It is, therefore, respectfully submitted the appeal originally prosecuted by the claimants is still pending, and

as to L. Z. and M. Z. Farwell, it was improperly dismissed and should be set aside and the case reassigned to the docket or the case proceed under the appeal by the government.

III.

The third ground assigned for dismissal of the appeal is "that in the said transcript there does not appear any assignment of errors or prayer for reversal as provided for in Revised Statutes United States, sections 997 and 1012."

The statement of the proposition carries on its face a misconception by counsel of the offices performed by writs of error and appeals in their technical sense, and particularly where the decree to be reviewed was entered "according to the practice of courts of equity of the United States." See sections 7 and 9, act of March 3, 1891 (26 Stats., 854).

Moreover, the court has so settled the practice on this point, under Rule 21, that it is not deemed proper further to consider it.

IV.

The fourth ground urged for dismissal of the appeal (third on counsel's brief, p. 8) is:

> The Court of Private Land Claims, from which this appeal is attempted to be made, consists of a chief justice and four associate justices. (See section 1 of the act establishing this court.) The appeal in this case was allowed and the citation signed by Wilbur F. Stone, one of the associate justices, and not a *presiding judge* (Transcript, p. 149). This was not a compliance with section 999 of the Revised Statutes.

Counsel seems again to misapply the provisions of section 999, Revised Statutes of the United States, 1878, and must have overlooked the decisions of this court in the cases of *Sheppard et al.* v. *Wilson* (5 How., 210); *Rodd* v. *Heartt* (17 Wal., 354), and especially the case of *Brown* v. *McConnell* (124 U. S., 489), which is conclusive of the question.

It is contended—

First. That the motion by L. Z. and M. Z. Farwell (only two of the appellants) to dismiss this appeal should be denied.

Second. That, if the motion to dismiss this appeal should be granted, the dismissal of appeal at the instance of L. Z. and M. Z. Farwell, allowed on February 21, 1898, should be set aside and the original appealed case assigned to the docket for argument in lieu of No. 293, October term, 1898.

Third. That if the court should dismiss this appeal and decline to set aside the dismissal of appeal by L. Z. and M. Z. Farwell, filed February 18 and allowed February 21, 1898, still the court should order the case reassigned to the docket for argument, as it does not appear that other appellants and plaintiffs below suggested a dismissal of their appeal, nor is it suggested that counsel for L. Z. and M. Z. Farwell represented or pretended to represent the other appellants.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, APPELLANT,
v.
ANTONIO SERAFIN PEÑA ET AL. } No. 72.

PETACA GRANT IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS

BRIEF ON BEHALF OF THE UNITED STATES.

On February 17, 1892, Antonio Serafin Peña and others filed their petition in the Court of Private Land Claims for the confirmation of what is known as the Petaca land grant, situate in the counties of Rio Arriba and Taos, in the Territory of New Mexico, and alleged to contain about 186,971 acres (R., 1–6).

On March 1, 1893, L. Z. and M. Z. Farwell filed their petition for the confirmation of the same grant (R., 15–17).

On March 3, 1893, Jose Garcia filed a petition for the confirmation of the same grant (R., 17, 18).

As all of these parties claimed under the same original grant title, the Court of Private Land Claims ordered that these suits be consolidated and proceed thereafter as one case under the title of *Antonio Serafin Peña et al.* v. *The United States*, No. 99 on the docket of the Court of Private Land Claims (R., 24, 25). In all of these cases the United States filed a separate answer, identical in form.

In the petition under which the case was tried (R., 1–6) it was alleged that the petitioners were the legal representatives of the original grantees of the said private land claim, and as such made claim and asserted ownership thereto in fee; that on January 29, 1836, Jose Julian Martinez, Antonio Martinez, Francisco Antonio Atencio, and the sons of the latter made application to the ayuntamiento of the proper district for a grant to a tract of land known as "La Petaca," on the Petaca River, and on February 22 following the ayuntamiento reported to Governor Albino Perez, then political chief of said Territory, that a certain grant for the same land had been forfeited and recommending that he grant the same to the petitioners, except to the sons of Atencio, who were minors. It was alleged that on February 25 the said governor made the grant as prayed for and directed the local alcalde to place the parties in possession, and file among the archives the act of possession and furnish the parties a testimonio thereof; that on March 25 following the said alcalde placed the parties in possession according to the laws then in force, and

executed the act of possession to Manuel Trujillo and thirty-four others, defining the boundaries as set forth therein, assigning to each of them 150 varas from north to south and east to west, together with an interest in common in the whole of said grant, and designating to Felipe Jaquez and five others of said grantees a specified piece of land within the general limits; all of which is set forth in and shown by said grant and act of possession.

It was further alleged that by virtue of such proceedings the said tract was fully segregated from the public domain of the Republic of Mexico and has ever since, and to the time of the filing of their petition, remained in the possession of the original grantees and their legal representatives in fee simple.

It was further alleged that the intent and purpose of the petitioners for and the authority making the grant was that it should be a community grant and inure to the benefit of all persons necessitous of land who should present themselves at the time of juridical possession and comply with other formalities specified, and that said intent and purpose was effectually consummated; that the original title documents for said grant were on file in the office of the surveyor-general of New Mexico, and that, notwithstanding diligent search therefor, the petitioners were unable to find the archive copy or evidence of the said grant because of the incomplete and faulty condition of the archives of the Mexican Government now in the possession of the United States; that the said tract does not lap or conflict in whole or in part with any other grant derived from Spain or Mexico, and that there

are no adverse claimants to the same except under the same grant title, as fully appears in the petition.

That at divers times, as specifically set forth in the petition, proceedings relative to the confirmation of said grant were had before the surveyor-general of New Mexico, but no final or definitive action was ever had in respect thereof by Congress or any tribunal lawfully authorized therefor; that there are no gold or silver mines or minerals of the same within the limits of said grant; that the grant document or expediente of said grant was an instrument duly authenticated and lawfully made, and at the time of the acquisition of the said territory by the United States the said grant was definitive, complete, and perfect.

Plaintiffs filed with their petition a copy of Senate Executive Document No. 31, Forty-fourth Congress, first session, alleging the same to contain correct copies and translations of the original petition, grant, and act of possession, in addition to certain proceedings had before the surveyor-general of New Mexico; and also a certified copy of the plat of an official preliminary survey approved by the surveyor-general of said Territory on December 6, 1878. (R., 116.)

The petition closed with the usual prayer for confirmation of the grant, after allegations for the purpose of deraigning title from the original grantees in the petitioners.

The answer of the United States (R., 24–26), identical in each of the three cases, averred want of knowledge or information as to the allegations in the petition and asked that plaintiffs be put to strict proof of their allegations.

MUNIMENTS OF TITLE.

The muniments of title are fully set forth (R., 7–10) as well as claimants' translation (R., 10–12), to both of which careful attention is suggested, especially the alleged act of possession in Spanish (R., 8, 9) translation of claimants (R., 11, 12).

The petition is directed to the ayuntamiento Ojo Caliente stating, "there is a tract of public land which is called the Petaca," and requesting that the "honorable body will please ascertain and inform the illustrious provincial deputation whatever you may deem proper, etc. (R., 10).

Upon the petition the ayuntamiento made its findings and report (R., 10), which were:

(*a*) "That the parties in the grant accompanying the foregoing petition have not cultivated nor placed any kind of improvements on the land which was given in the long period of full twelve years and which is now again applied for," thus showing the land had formerly been under grant to others and had been abandoned for twelve years; also that the old grant, showing the names of the grantees, was presented with the original petition. Nothing appears to show what became of these old-grant papers referred to.

(*b*) The ayuntamiento was of opinion the former grantees had forfeited their rights and that it should be granted to the new applicants, "*under the conditions expressed in said grant.*" This latter evidently referred to the conditions contained in the old grant documents presented with the original petition for this grant. What

these conditions were can only be gathered from the action taken upon the application, which seems to indicate they must occupy and not abandon it.

(*c*) It was also of opinion that the children of Francisco Antonio Atensio should not become parties in the said possession because they were minors. (R., 10.)

(*d*) The report of the ayuntamiento concludes with the recital: "*The most excellent deputation will direct as may be most in accordance with the laws.*" (R., 10.) Dated at Ojo Caliente, February 22, 1836.

On February 25, 1836, at Santa Fe, Governor Perez acted upon the report of the ayuntamiento. (R., 11.)

It appears there was no objection "to granting the applicant and his associates the land mentioned, *the former grantees not possessing now any right therein, they having abandoned the same*," and directed the alcalde to place "those who now apply for the possession thereof in the required form and in conformity with the law on the subject, setting forth the general donation, in which shall necessarily be stated the boundaries of said possession, and without prejudice to any third party."

The specific directions as to acquiring title are given in unmistakable language, "*Also binding the grantees* to the obligations prescribed by the laws to acquire title, for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom as may be requested of him, on payment of his corresponding fees."

The form and language of this instrument shows:

First. The land had been under grant and abandoned,

and hence the original grantees named therein retained no rights in the land.

Second. The alcalde might proceed to place those applying in possession.

Third. That the alcalde should set forth the general donation and should necessarily state the boundaries of the general tract within which the individual donations were to be made.

Fourth. The grantees were to be obligated to acquire title in the manner prescribed by law.

Fifth. The alcalde was to take charge of the general document of *distribution* and to give a testimonio to each as requested. Allotments or individual distributions were contemplated, and the original to be returned for record (the archives) testimonios to be given the distributees.

ACT OF POSSESSION.

The act of possession or distribution was executed on March 25, 1836 (R., 11, 12), and after reciting his authority the alcalde declared:

> I proceeded to distribute said land in the presence of the parties interested, *giving to each one of those mentioned in the list* one hundred and fifty varas in a direct line, designating to them as their boundaries on the south the cononcito and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz Hill, *on the east the creek of the aguaji of the Petaca*, and on the west the boundary of the Vallecito grant, *within which limits the said new grantees are located.*

It is proper to note at this point that the original act of possession discloses, upon careful examination, that the

original words designating the east boundary have been erased and others substituted or written over them; the effect of this attempted change is to enlarge the tract from east to west.

After designating the general limits within which the distributions were made, the alcalde proceeded to name and define the distributions.

He further states (R., 11, 12) the *grantees in the annexed* list understanding that the pastures, forests, waters, and watering places are in common, "they are further informed that he who fails to occupy and cultivate the land granted within the term of five years, in order to acquire title, the same can not be by him sold, exchanged, or alienated, nor will he be admitted in a new settlement, and if any should of their own accord abandon the tract, they remain informed further that they possess no right, such being the requirements of law."

Then follows a list of the citizens to whom distributions were made. (R., 12.)

The muniments of title were filed with the surveyor-general of the Territory of New Mexico in the early part of 1875, accompanying the petition of claimants, made under the law of July 22, 1854. (R., 6, 7.)

BOUNDARIES.

The general limits or outboundaries within which the allotments or distributions were made are stated by claimants to be as follows:

> Los Linderos, por el sur la puerta del cañoncito y tierras de Jose Miguel Lucero, por el norte la loma que commumente llaman de tio Ortiz, y por el

oriente el arroyo de las aguajes á la Petaca, por el poniente hasta donde sujeta la Merced del Vallecito.

There was no dispute upon the trial as to location of the south and west boundaries.

As to the east boundary, serious contention and objection was made on behalf of the Government based upon the fact that the original act of possession appears to have been tampered with and the original words in Spanish designating the east boundary call were changed and erased and others substituted or attempted to be formed by altering and adding to those written in the original. The Spanish words now appearing in the original are, *por el oriente la rrallo de las aguajes a petaca*, and which have been translated by claimants "*on the east the creek of the aguaje of the Petaca.*"

After careful examination by Mr. Tipton of the changes and erasures, the original Spanish words to designate the east boundary were found to have been "*la mesa de la Petaca*" (see testimony of Mr. Tipton (R., 31-34) and Mr. Clarence Key (R., 76, 77). The original muniments of title are now in the possession of the clerk for the inspection of this court.

The topography of the country to the east of the valley of the Petaca as shown by the testimony of the claimant, Peña (R., 47), would indicate the erasures were made with a view of stretching the width of the grant very materially.

On cross-examination, Antonio Serafin Peña says (R., 47):

Q. You live at La Petaca now, don't you, Mr. Peña?

A. Yes, sir.

Q. You know the country in that neighborhood well, don't you?

A. I do.

Q. Right to the east of the Rio Petaca, the Petaca River, isn't there a mesa, a very high mesa?

A. Yes, sir.

Q. What is the name of that mesa?

A. The Mesa de Titillo.

Q. How long is that mesa?

A. I do not know how long it is.

Q. Is it as much as 15 miles from north to south?

A. I do not know. I do not understand very well about miles.

Q. Well, how many leagues is it?

A. I do not know; I can not state.

Q. Does it go as far south as Cononcito?

A. It passes that way.

Q. And as far north as the Los Tusas?

A. Yes, sir.

Q. Do you know a canyon between the Petaca River and the Arroyo de los Aguages; have you been across that country?

A. Yes, sir.

Q. Is not this Mesa de Tetillo the only mesa between the river Petaca and the Arroyo de los Aguages?

A. Yes, sir.

Q. It is a very high mesa, isn't it?

A. Yes, sir; parts of it are very, and other parts are very low.

It is evident the change in the original boundary call on the east was intended to pass beyond the well-defined and natural boundary so that the shape of the grant would enable the north boundary call, "Tio Ortiz Hill," to be established many miles north of the Tio Ortiz Hill,

situated near the village of Las Tusas. The extreme northeast corner shown on the plat of the preliminary survey made in 1878, upon the petition filed before the surveyor-general under the law of 1854, is designated as "Tio Ortiz Hall" (R., 116).

The evidence disclosed the fact that from Las Tusas south the tract had always been known as the Petaca, while from Las Tusas north it was called that of Las Tusas, which place is shown on the plat (opposite p. 116 of the record) at a little above the center of the tract claimed. The stream called the Rio Petaca evidently controlled the *locus* of the settlements.

POSSESSION.

The act of possession or distribution indicates the limits within the valley of the Petaca. How long they remained can not be determined from the loose and general statements of witnesses. It does unquestionably appear that in 1848 the grant had been abandoned, when is not shown. (R., 128–135.)

The testimony of Jesus Maria Barela, one of the original grantees, was taken before the surveyor-general in 1877 (R., 123), and although he testified he wrote the act of possession he does not state anything about the duration of the possession.

Serafin Peña, the principal claimant in this case, testified before the surveyor-general in 1875 (R., 127, 128), and again in this case (R., 42–49), and it must be admitted he is a remarkably obliging witness.

It appears by Exhibits C and D to his testimony (R., 128–135), taken in 1875, that at the date of the treaty they were not in possession of the tract or the allotments.

Commencing on March 20, 1848, efforts were made to again take possession and make allotments to a large number, including some of the original grantees, which continued down to June 10, 1848. The act of possession seems to have been executed "in the name of the Territory of New Mexico, and that they shall receive that concession in the name of the Constitution of the United States." (R., 132.)

An examination of the proceedings from March 20 to June 10, 1848 (R., 128–135), will at once remove all question as to the possession, its character, and the extent of the grant, and confirm in one's mind the conclusion that the grant had been abandoned and all rights understood to have been lost thereby; otherwise these new proceedings, even under the Mexican Government, would have been unnecessary.

Since the treaty of Guadalupe Hidalgo the number of people who have gone upon this land, including those specifically mentioned in the lists of allotments made in 1848, is very great, and within the general outboundaries claimed now large settlements have grown up, and the Denver and Rio Grande Railroad runs through the same.

The extravagance of and the questionable testimony by which the claimants are seeking judicial cognizance of this grant does not commend its integrity.

The opinion of a majority of the court below confirming the grant to all those who took possession in 1848 for the benefit of all parties in interest, and fixing the boundaries on the north as the lower Tio Ortiz Hill near Buckman's mill and the east boundary at the Mesa de la

Tetillo of the Petaca, was delivered by Mr. Justice Sluss (R., 135–139).

Mr. Chief Justice Reed was of opinion the grant should be confirmed to the extreme outboundaries claimed, and should be to the descendants and representatives of all persons who petitioned for the grant. (R., 139, 140.)

Mr. Justice Murray dissented from both, and was of opinion the grant should be rejected. (R., 140-143.)

The majority opinion evidently overlooked the fact that at the date of the treaty the grant was abandoned and the attempt to again deliver formal possession to a large number of persons never before on the land, as well as to again allot lands to some of those who had formerly occupied allotments made under the Mexican Government, could derive no validity therefrom nor amount to a forgiving of their failure to occupy their lands as required by the original grant and act of possession. (*Cessna* v. *United States*, 169 U. S., 165.)

It is not made to appear that any one of the allottees was given or permitted to return to his original holdings. On the contrary, it appears that allotments were made without regard to the particular land formerly possessed by those who were for the second time placed upon the grant.

The court seems to have disregarded the position always taken by counsel for the Government that the allotments were held in severalty and no community of interest therein was permissible, and as to the unallotted lands the *jus disponendi* passed by the treaty to the United States.

It is not deemed proper or necessary to burden the court with repeated arguments, but simply directing the attention of the court to grounds upon which it is contended a reversal of the judgment below should be predicated and the petitions dismissed.

1. At best, under the original grant and act of possession, no interest passed except to the allotments made in severalty in which there was no community of interest, and the *jus disponendi* of the remainder continued in the Mexican nation and passed by the treaty to the United States.

United States v. *Santa Fe*, 165 U. S., 675.
United States v. *Sandoval*, 167 U. S., 278.
Rio Arriba Land, &c., Co. v. *United States*, U. S., 298.

2. The grant by Governor Perez and the act of possession disclose that the interest passed to the various distributees was only inchoate, and, under the act of March 3, 1891, beyond judicial cognizance.

3. The property had been totally abandoned prior to the treaty of Guadalupe Hidalgo (R. 128–135).

The attempt to reallot portions of the lands to several original allottees and others between March 20 and June 10, 1848, conferred no rights, nor excused the prior abandonment. The laws of Mexico were not in force in New Mexico after the date of the treaty. The attempt to regrant or distribute lands in 1848, so as to excuse the defaults under the former government, was alone the province of the political branch of this Government. (*Cessna* v. *United States*, 169 U. S., 165.)

The opinions of the justices of the Court of Private Land Claims are quite elaborate, and additional discussion seems unnecessary.

On the motion of Farwell to dismiss appeal of the United States, counsel can add nothing to what has been said on brief in opposition.

It is submitted the decree should be reversed and the claims rejected by dismissal of the petition.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

IN THE SUPREME COURT

OF THE

UNITED STATES.

October Term, 1898.

The United States, Appellant, vs. Serafin Pena, L. Z. & M. Z. Farwell and Jose A. Garcia, et al., Appellees.	No. 293. Appeal from Court of Private Land Claims.

BRIEF OF APPELLEES, L. Z. & M. Z. FARWELL, ON MOTION TO DISMISS APPEAL.

The motion to dismiss is as follows:

(Omitting title.)

And now come L. Z. & M. Z. Farwell, two of the appellees in the above entitled cause, by Edward L. Bartlett, their solicitor, and move the court to dismiss the appeal herein, for the following reasons, viz:

First. That such appeal was not authorized at the time it was taken, by the act of March 3, 1891, entitled "An act to establish a court of private land

claims, and to provide for the settlement of private land claims in certain states and territories." And because said appeal is without authority of law and this court is therefore without jurisdiction to entertain said appeal, it being provided in Sec. 9 of said act that the United States in case of a confirmation of a claim, in whole or in part, shall have the right of appeal to the supreme court of the United States, *such appeal to be taken within six months* from date of such decision, while the transcript in this case shows, at pages 148 and 149, that the decree was entered in the court of private land claims on the first day of December, 1896, and said appeal was not allowed until the 14th day of April, 1898.

Second. Under the said Sec. 9, it is made the duty of the attorney for the United States upon the rendition of any judgment of the court confirming any claim to notify the attorney general, in writing, of said judgment, and in any case in which such statement shall not be received by the attorney general within sixty days after the rendition of said judgment, the right of appeal on the part of the United States shall continue to exist until six months next after the receipt of such statement. That the transcript at pages 148 and 149 shows that such notification to the attorney general, by Matt. G. Reynolds, attorney for the United States in said court of private land claims was not made by him "upon the rendition of said judgment" as required by law, but was made fifteen months thereafter, to-wit, on the 9th day of March, 1898, whereby the appellant waived and forfeited its right of appeal herein.

Third. The said Section 9 of said act provides that such appeal shall be taken in all respects and in the same manner and upon the same conditions, except in respect of the amount in controversy as is now provided by law for the taking of appeals from decis-

ions of the circuit courts of the United States, and that in the said transcript there does not appear any assignment of errors or prayer for reversal as provided for in Revised Statutes, United States, Secs. 997 and 1012.

Fourth. The said court of private land claims, from which this appeal was taken consists of a chief justice and four associate justices, and the citation in this case is not properly issued or signed by the chief justice thereof, nor was the appeal allowed by him as provided by law, but the same in the transcript appear to have been allowed and signed by Wilbur F. Stone, one of the associate justices. (Transcript, p. 149).

L. Z. & M. Z. FARWELL,
Appellees,
By EDWARD L. BARTLETT,
Their Solicitor.

POINTS AND AUTHORITIES.

I.

This appeal was not taken within the time fixed by the act of March 3rd, 1891, therefore it could not be allowed by the court of private land claims nor considered by this court.

Section 9 of that act, 26 Statutes, p. 854, in Vol. 1, Supplement to Revised Statutes, 917, provides for appeals from that court as follows:

"Sec. 9. That the party against whom the court shall in any case decide—the United States, in case of the confirmation of a claim, in whole or in part, and the claimant, in case of the rejection of a claim, in whole or in part—shall have the right of appeal to the supreme court of the United States, such appeal to be taken within six months from date of such decision, and in all respects to be taken in the same manner and upon the same conditions, except in respect of the amount in controversy, as is now provided by law for the taking of appeals from the decisions of the circuit courts of the United States.

"On any such appeal the supreme court shall retry the cause, as well the issues of facts as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the proceedings below as truth and justice may require: and on such re-trial and hearing every question shall be open, and the decision of the supreme court thereon shall be final and conclusive. Should no appeal be taken as aforesaid, the decree of the court below shall be final and conclusive.

"*Upon the rendition of any judgment of the court confirming any claim*, it shall be the duty of the attorney of the United States to notify the attorney general, in writing, of such judgment, giving him a clear statement of the case and the points decided by the court *which statement shall be verified by the certificate of the presiding judge of said court:* and in any case in which such statement shall not be received by the attorney general within sixty days next after the rendition of such judgment, the right of appeal on the part of the United States shall continue to exist until six months next after the receipt of such statement.

"And if the attorney general shall so direct, it shall

be the duty of the clerk of the court to transmit the record of any cause in which final judgment has been rendered to the attorney general for his examination. In all cases it shall be the duty of the attorney general to instruct the attorney of the United States what further course to pursue and whether or not an appeal shall be taken."

The record here shows that the majority opinion of the court below was rendered on the fifth day of September, 1896 (Transcript, p. 135); and that the decree was entered at the November term, 1896 (Transcript, p. 144), [date not given.] Appellant in its prayer for appeal states the date of decree as December 1st, 1896 (Transcript, p. 148).

The prayer for allowance of appeal by the United States attorney was not made nor allowed until the fourteenth day of April, 1898, nearly *fifteen months after the final decree was entered.*

The allowance of the appeal and the issuance of the citation were too late to enable this court to take jurisdiction of the appeal.

Fowler vs. Hamill, 139 U. S. 549.
Whitsitt vs. Union Depot Co., 122 U. S. 363.
Scarborough vs. Pargoud, 108 U. S. 567.
Fayolle vs. R. R. Co., 124 U. S. 523.

These cases all arose under section 1008, Revised Statutes, limiting the time for appeal to two years; but the principle is the same where the time for appeal is limited, it must be taken within that time, or the right is absolutely gone; this is *jurisdictional*, and controls the power of this court to consider the appeal.

It will doubtless be claimed by the appellant here that the attorney general not having received the statement from the United States attorney within the

sixty days provided for in section 9 of the act quoted above, that the government has the right to claim six months after the attorney general should so receive it. The attorney for the United States in his prayer for appeal, not only states that the attorney general did not receive such statement within the sixty days, but that he himself did not make it until the 9th day of March, 1898 (Transcript, p. 149). He offers no excuse or explanation for his neglect of duty under the mandatory portion of said section 9 of the act, which provides:

"Upon the rendition of any judgment of the court confirming any claim, *it shall be the duty of the attorney of the United States to notify the attorney general in writing of such judgment*, which shall be verified by the certificate of the presiding judge of said court."

This imposes a duty upon appellant to do something at once upon the rendition of the judgment; preliminary to its right of appeal, then; if by error in transmission, accident, mistake, sickness or absence of the attorney general, or any other sufficient cause, he does not receive the statement, within sixty days, the government has six months longer in which to appeal. That is, the government is given eight months in which to appeal instead of six months, which the claimant has. But the appellant here claims that it can deliberately for no reason and without any excuse and from mere caprice or indifference, allow more than fourteen months to elapse before making the statement preliminary to an appeal, which the law says shall be made "on the rendition of the judgment;" and claim six months thereafter. If this can be done, the government might allow years to elapse before making the statement "certified to by the *presiding judge*," to the great wrong and injury of claimants. The court of private land claims is limited in its existence; its life has been once extended, and there is no certainty that this will again be done; to allow such

absolute failure in duty by officers of the government to accomplish the delay involved in an appeal to this court might deprive the claimant of any relief from the court of private land claims by reason of its ceasing to exist.

The neglect of the attorney for the United States to do his plain duty as commanded by the act within the time specified was gross laches of the appellant by which it forfeited its right of appeal. The latter part of the section (9) giving the government six months from the time the attorney general should receive the statement made by the United States attorney, "verified by the certificate of the presiding judge of said court," could not have been intended to make the time for appeal unlimited, and to depend upon the dilatory pleasure of the United States attorney, as to when he should make his statement. The statute itself limits the time for appeal to six months absolutely. Afterwards it gives the United States an additional sixty days upon complying with certain requirements on its part, making a total of eight months from the rendition of the judgment in which the United States may take its appeal.

This is the first time the question has been presented to this court under the act establishing the court of private land claims, in which there are many cases now pending, and others have been determined against the government, which will be seriously affected by the decision on this motion; and it is submitted that section 9 of the act will not bear the extended construction claimed by the appellant, but, that under the previous decisions of this court and the fair interpretation of the language of the section this motion must be sustained.

II.

Section 9 of the act further provides that, "such appeal is in all respects to be taken in the same manner and upon the same conditions, except in respect of the amount in controversy as is now provided by law for the taking of appeals from decisions of the circuit courts of the United States." These latter provisions are found in Revised Statutes of the United States, Sections 997, 999, 1012, and in Rule VIII of this court. Section 997 requires that, "there shall be annexed to and returned with any writ of error for removal of a cause at the day and place therein mentioned, an authenticated transcript of the record *an assignment of errors, and a prayer for reversal with a citation to the adverse party.*" These provisions are required on appeal the same as in writs of error by Section 1012. An examination of the transcript in this case will not show any assignment of errors or prayer for reversal as required by law, and for this failure the court should dismiss the appeal herein under

Paragraphs 4 and 5 of Rule 21.
Bonites vs. Hampton, 123 U. S. 519.
United States vs. Curry, 6 How U. S. 106-113.
Boston Mining Co. vs. Eagle Mining Co., 115 U. S. 221.
Dugger vs. Taylor, 121 U. S. 286.

III.

The court of private land claims, from which this appeal is attempted to be made, consists of a chief

justice and four associate justices. See Section 1 of the act establishing this court. The appeal in this case was allowed and the citation signed by Wilbur F. Stone, one of the associate justices, and not a *presiding judge* (Transcript, p. 149). This was not a compliance with Section 9, Revised Statutes.

Bartmeyer vs. Iowa, 14 Wall 26.

In this case the court says, at p. 28:

> "We are of opinion that the act of congress requires that when there is a court so composed, the writ can only be allowed by the chief justice of that court, or by a justice of the supreme court of the United States. In case of a writ to a court composed of a single judge or chancellor, the writ may be allowed by that judge or chancellor, or by a justice of the supreme court of the United States."

This case and the language of the opinion is quoted and approved in *Havnor vs. N. Y., 170 U. S. 410*, decided at the last term of this court.

While these are cases from state supreme courts, it is submitted that the language and reasoning applies to any court composed of more than one judge having a chief justice.

The "presiding judge of the court" must verify the statement made by the United States attorney to the attorney general. On principle, should not he allow the appeal and sign the citation under the authorities cited above?

Revised Statutes, Sec. 999, expressly provides that "the citation shall be signed by a *judge of said circuit court*, or by a justice of the supreme court." Plainly indicating the distinction between a *circuit judge*, and a justice of the supreme court, *sitting* as a circuit judge.

There is only one circuit judge in a circuit. *Revised Statutes, Sec. 607.* But the circuit courts may be *held* by the circuit justice, the circuit judge, or by

the district judge sitting alone, or by any two of said judges sitting together:

Revised Statutes, Sec. 609.

If the court is held by the two former, or either alone, the appeal may be allowed and citation signed by either. If by the circuit and district judge, then under Sec. 999, it must be allowed and signed by the circuit judge; and if by the district judge alone, he must alone allow the appeal and sign the citation as, "sitting as circuit judge." So, under no circumstances, could there be the difficulty suggested in the cases cited, where the court is absolutely composed of three or more judges with a chief justice, who presides and represents the court.

For which reasons it is respectfully urged that the appeal in this case should be dismissed for lack of jurisdiction.

EDWARD L. BARTLETT,
Solicitor for Appellees, L. Z. & M. Z. Farwell.

To Hon. Matt. G. Reynolds, Attorney, United States Court Private Land Claims, No. 418 1-2 Olive St., St. Louis, Mo.:

You will take notice that the appellees, L. Z. and M. Z. Farwell, in the above entitled cause have filed their motion to dismiss appellant's appeal herein, for reasons stated therein, in the supreme court of the United States, a printed copy of which, together with their brief of argument thereon, is hereto attached, and that the time fixed for submitting such motion in such supreme court is Monday the 17th day of October, A. D. 1898.

Very respectfully,
EDWARD L. BARTLETT,
Solicitor for Appellees, L. Z. &M. Z. Farwell.

Territory of New Mexico, } ss.
County of Santa Fe. }

Edward L. Bartlett, being first duly sworn, deposes and says that he is the solicitor for the appellees, L. Z. and M. Z. Farwell, that on the 27th day of August, 1898, he deposited in the postoffice at Santa Fe, New Mexico, the notice, motion and brief of which the above and foregoing is a true and correct copy, directed to the proper address of Matt. G. Reynolds, attorney for appellant, as the same was given to affiant by W. H. Pope, the assistant in office of said Reynolds, as attorney for the United States court of private land claims, to wit: No. 418½ Olive street, St. Louis, Mo. That the postage thereon was fully prepaid, and that in due course of mail said notice, motion and brief should reach counsel for appellant, more than thirty days before the time fixed by said notice for the hearing of said motion.

Edward L. Bartlett

Subscribed in my presence and sworn to before me this 27th day of August, A. D. 1898.

Notary Public.

IN THE SUPREME COURT
OF THE
UNITED STATES,
October Term, 1898.

The United States, Appellant, vs. Serafin Pena, L. Z. & M. Z. Farwell and Jose A. Garcia, et al., Appellees.	No. 293. Appeal from Court of Private Land Claims.

BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

This appeal brings up the three cases from the court of private land claims, Nos. 99, 153 and 233 in that court, which were consolidated and tried as one case there, the claimants being all for the validity of the grant and praying its confirmation against the United States, although under different theories as to whom the grant enured. The claimants in No. 99 and 233 contending that it was a *community* grant for the benefit of Jose Julian Martinez, the petitioner *and* the 35 others who were put in juridical possession by the alcalde under the direction of the governor as joint owners—Transcript, p. 1, 2, 3, and 18.

The petitioners in No. 153, claimed under the same grant and act of possession, but that the petitioners alone viz, Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio were granted this land, and were

alone placed in possession (except as to the small tracts mentioned) and that the entire grant enured to the benefit of the three petitioners mentioned—Transcript, p. 15-16.

A true translation of the original petition, grant and act of possession as introduced in evidence is as follows:—

Transcript, p. 121-122."

EXHIBIT C FOR PETITIONERS IN CASE NO. 153.

Translation of document marked "Exhibit B."

Seal third (seal). Two reals.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

Respectable Ayuntamiento: I, Jose Julian Martinez, resident of this jurisdiction, appear before your honor and, together with my father, Antonio Martinez, Francisco Antonio Atencio, and the sons of the latter, with all submission and under the most legal protestations, represent and state—

That it being our intention to engage in recommendable occupation of agriculture, so as by this mode to aid in the support of our families, and being satisfied that up the river from this jurisdiction there is a tract of public land, which is called the Petaca, we therefore pray your honor that, in case no injury would result to any third party, and you know of no individual owning said land, which your honorable body will please ascertain, and inform the illustrious provincial deputation whatever you may deem proper in respect to our application, which is a favor we solicit, etc.

Ojo Caliente, January 29, 1836.

JOSE JULIAN MARTINEZ.

The respectable ayuntamiento, over which I have the honor to preside, inasmuch as that the parties in the grant accompanying the foregoing petition have not cultivated nor placed any kind of improvements on the land which was given them in the long period of full 12 years, and which is now again applied for, are of the opinion that the same should be granted the *the* new applicants for the reason that the former have forfeited the right granted them for the cause stated and under the conditions expressed in said grant; observing that this ayuntamiento also believes that the children of Francisco Antonio Atencio should not become a party in the said possession, as they are minors, subject to paternal control, and do not

possess the knowledge necessary to empower or give authority to petition in their name for that which they are not in a condition to acquire in this manner.

The most excellent deputation will direct as may be most in accordance with the laws.

Ojo Caliente, February 22, 1836.

JOSE ANTONIO MARTINEZ.

JOSE JULIAN MARTINEZ, Secretary.

Santa Fe, February 25, 1836.

Having seen the action of the ayuntamiento of Ojo Caliente of date 22d instant, in which they say there is no objection to granting the applicant and his associates the land mentioned, the former grantees not possessing now any right herein, they having abandoned the same, the alcalde of said place will place those who now apply for the same in possession thereof in the required form and in conformity with the law on the subject, setting forth the general donation, in which shall necessarily be stated the boundaries of said possession, and without prejudice to any third party; also binding the grantees to the obligations prescribed by the laws to acquire title, for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom, as may be requested of him, on payment of his corresponding fees.

PEREZ.

Seal fourth (seal). One cuartilla.

For the years one thousand eight hundred and sixty-six and eight hundred and thirty-seven.

At Santa Cruz del Ojo Caliente, jurisdiction of this name, on the twenty-fifth day of the month of March, one thousand eight hundred and thirty-six, in compliance with the decree of the civil and military governor of the Territory of New Mexico, Alvino Perez, of date February 25, of the same year, in which he directs me to place in possession the petitioners who have applied for the Petaca tract of land, and is set forth in their petition of date 29th of January, of the same year, I proceeded to distribute said land in the presence of the parties interested, giving to each one of those mentioned in the list one hundred and fifty varas in a direct line, designating to them as their boundaries on the south the entrance to the canoncito and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz Hill, on the east the creek of the aguaje of the Petaca, and on the west the boundary of the Vallecito grant, within which limits the said new

grantees were located. Of these I donated only to citizen Felipe Jaquez from the boundary of Vicente Martin to that of Eusebio Chaves, the land being a narrow strip and of little utility; thereupon I donated to citizen Manuel Lujan two small valleys, which were not measured with the line and reach to the distribution of the said canoncito, and I donated to citizen Mariano Pena two small valleys, very narrow, without varying; and, continuing, I donated to citizen Antonio Eluterrio Ortiz, in the same canoncito, a small valley, also without varying; following the same course in the said canoncito, I donated to citizen Jose Francisco Lucero a small valley, also without varying, and to Jose Antonio Lucero another small valley, the boundary thereof being on the south the mouth of the same canoncito, leaving therefor a plaza one hundred and fifty varas, and fifty for women's gardens and fifty for ingress and egress, there remaining at the mouth of the canada de la Dorada, for common watering places, one hundred and fifty varas in a direct line, which donation I made in the name of the national sovereignty, in conformity with the law on the subject, the grantees mentioned in the annexed list understanding that the pastures, forests, waters, and watering places are in common, and they were further informed that he who fails to occupy and cultivate the land granted within the term of five years, in order to acquire title, the same cannot be by him sold, exchanged, nor alienated, nor will he be admitted in a new settlement; and if any should of their own accord abandon the tract, they remain informed futher that they possess no right, such being the requirements of law; and being informed of and agreeing to all this, they received the accepted possession, in virtue of which they plucked up herbs, leaped, cast stones, and shouted with joy saying, God be praised, long live the nation, long live the sovereign congress and the law that governs and protects us, and other manifestations of pleasure, by virtue of which they took possession; and, that it may so appear at all times, I, under this decree, signed this grant and donation with all the authority his excellency was pleased to confer upon me for the purpose set forth in the above petition and expressed in said decree attached to the present grant, the witnesses being the citizens Jesus Maria Barela and Jose Francis Lucero, as properly made.

JOSE ANTONIO MARTINEZ.
JESUS MARIA BARELA.

There was given to Juan de Jesus Jaquez from the

boundary of Jose Gabriel Vigil to a pinabete on the north; valid

(Rubic)

List of the citizens who took possession [of][in] the Petaca grant of land, as set forth in the grant, on the other side of this, to wit:

Miguel Trujillo, Juan de Jesus Olgurin, Lorenzo Griego, Francisco Valdez, Francisco Vigil, Juan de Jesus Vigil, Joaquin Martin, Jesus Ma. Barela, Jose Antonio Lucero, Jose Gabriel Vigil, Juan de Jesus Jaquez, Juan de los Reyes Sena, Carlos Torres, Antonio Feliciano Martinez, Jose Bernardo Torres, Benito Martin, Felipe Jaquez, Eusebio Chaves, Antonio Jose Martin, Antonio Jose Chaves, Sabino Chaves, Antonio Martines, Francisco Antonio Atencio, Jose Julian Martin, Jose Julian Sanches, Amador Sanches, Jose Francisco Roibal, Juan Antonio Chaves, Antonio Trujillo, Jose Trujillo, Jose Ma. Jaquez, Manuel (defaced), Mariano Pena, Luterio Ortiz, Jose Francisco Lucero, Jose Antonio Lucero.

The foregoing translation made by me from the Spanish is correct, to the best of my knowledge and belief.

SAM'L ELLISON.

Subscribed and sworn to before me this the 12th day of February, 1875.

JAMES K. PROUDFIT,
U. S. Surveyor General.

Surveyor General's Office.

Translator's Department, Santa Fe, N. M., February 18, 1875.—The foregoing translation, having been by me compared with the original in Spanish and found correct, is hereby adopted for the official translation.

DAV. J. MILLER,
Translator.

Surveyor General's Office.

Santa Fe, N. M., July 21, 1883.—The foregoing is a correct copy of the original paper on file in this office in private land claim No. 105, known as the Petaca grant.

Witness my hand and official seal.

HENRY M. ATKINSON,
Surveyor General.

On the trial there was introduced in evidence, a series of papers signed by Salvador Lucero, prefect of Rio Arriba county, and Jose Vicente Jaramillo, justice of the peace of the same county, dated in March, 1848, which

are orders to notify individuals who might desire to be placed in possession of the Petaca grant, together with "a general list formed at the new possession which they commonly called LA PETACA, made today the 27th of March, in the year of our Lord, 1848, in conformity to the superior decree of the prefect, Don Salvador Lucero, where he orders me that I place in possession those citizens who justly may have died or are not present * * * I stated in a loud voice that I was going to measure the land in the name of the Territory of New Mexico, and that they shall receive the concession in the name of the constitution of the United States, etc."

Then follows a list of 39 persons, after which the justice certifies "they took possession of it by the authority and in the name of the Territory of New Mexico and respecting the Constitution of the United States." See transcript pp. 131 to 134.

Afterwards on the tenth of June, 1848, 22 others were placed in possession by Jose Rafael Pena, "who was commissioned for that purpose by the alcalde, Jose Vicente Jaramillo." See transcript pp. 134-135.

These last two documents were offered in evidence by the United States on the trial.

The court, by three judges, rendered an opinion that this grant was genuine; that the governor had power to make it, and that juridical possession was given to the petitioners and the 33 others accompanying them named in the list, and that the title to the grant vested (to the extent of 11 square leagues) in the 36 named in the list. That the same was not abandoned by these grantees, and closes with the following: "The evidence shows that in 1848, a number of persons took possession of the tract claiming it under the grant; that among these were a number who were original grantees and distributees in 1836, *these latter were certainly owners at that time*, and their acceptance of possession in connection with the others and in recognition of their right in the tract, is sufficient to

warrant the confirmation in the name of all those who took possession in 1848, for the benefit of all parties in interest." See transcript, p. 135 to 139.

The chief justice did not concur in this opinion, stating that in his opinion the grant should be for the whole amount claimed and for the benefit only of the persons who petitioned for the grant. See transcript, p. 139-140.

Mr. Justice Murray differed from both these opinions, and in his dissenting opinion held that the grant was absolutely void, that it did not comply with any of the requirements of the law at the time it was made, and that the claim should be rejected and the petition dismissed. See transcript, pp. 140-143.

A decree was entered in accordance with the majority opinion, limiting the area of the grant to 11 square leagues, and confirming it "to those persons, who in the year 1848 were placed in possession of the said Petaca tract" naming them to the number of 40.

From this decree, the United States attempted to take its appeal to this court by filing a transcript in this case in which there is a motion by appelees to dismiss such appeal which is now pending.

POINTS AND AUTHORITIES.

This grant was not petitioned for, recommended or given as an *original* grant. The ayuntamiento or town council, in its report to the political chief stated that, "inasmuch as that the parties in the grant accompanying the foregoing petition have not cultivated nor placed any kind of improvements on the land which was given them, in the long period of full twelve years, and which is now again applied for, are of opinion that the same should be granted, the new applicants, for the reason that the former have forfeited the right granted them, for the cause stated, and under the conditions expressed in said grant." See transcript, p. 120.

The political chief upon this report decided that "the former grantees not possessing now any right herein, they having abandoned the same the alcalde of said place, will place those who apply for the same in possession thereof." See transcript, p. 122.

From which it is apparent that previous to the decision in 1836, there had been a grant of this tract and title had passed from the government of Mexico or Spain, and that this action of the political chief in 1836, was simply to revalidate or revive the grant which had theretofore been made, and which had not up to that time been denounced. It is made further apparent by the report of the ayuntamiento, referring to "the grant accompanying the foregoing petition."

The petition and other proceedings in this case were had under the colonization laws of Mexico, of August 18, 1824, and the regulations thereunder of November 21, 1828. ((And it is a strong circumstance in their favor that they were upon *stamped paper* which was a government monopoly, and only used on official documents.)

See: Reynolds Spanish Mexican Land Laws, pp. 121, 141-143.

And appellees claim that the record here shows these laws and regulations have been substantially complied with.

Article 1, of the regulations authorizes the political chiefs of the territories to grant the public lands of their respective territories to the contractors, families, or private persons, Mexicans or foreigners who may apply for them, for the purpose of cultivating them or living upon them.

Article 2, provides that every applicant shall apply to the political chief of his territory in which application is to be given his name, country, profession, the number, nature, religion or other circumstances of persons whom he desires to colonize. The petition in this case complies with this regulation, except that instead of being addressed to the political chief direct, it is to the ayuntamiento of the vicinity of Ojo Caliente, asking that body to present the matter. Nor is the religion of the petitioners described in this application. Nor is a map submitted.

Article 3 provides that the political chief shall immediately proceed to inform himself as to the merits of the application, "and shall at the same time hear the respective municipal authority, as to whether any objection or not is found to the grant." This was done in this case.

Article 4, provides, "in view of all which the political chief shall grant or not said application in strict conformity with the law."

Article 5, "the grants made to private persons or families, shall not be held to be definitively valid, without the previous consent of the territorial deputation, for which purpose the respective proceedings shall be forwarded to it."

Article 6, "when the political chief shall not obtain the approval of the territorial deputation, he shall report to the supreme government forwarding the proceedings in the matter for its consideration."

Article 7, is in reference to the proceedings for the "colonization of many families," which does not apply here.

Article 8 provides that "the political chief shall issue a document to serve as a title to the party in interest."

Article 9 provides for the entering of the application and grant in a book intended for the purpose, a detailed report of all which shall be forwarded to the supreme government every quarter.

There is nothing in these proceedings to show that any such entry was made, but this was no fault of the grantees, it was a ministerial duty which they had a good right to suppose would be performed by the officer charged therewith, as was the approval of the territorial deputation to the act of the political chief as provided for in article 5, *supra*, and, if the territorial deputation should not approve the grant it was to be reported to the supreme government—article 6, *supra*.

That this failure or neglect on the part of the public officers to perform their duty, would not operate to the injury of the grantee, see:

Hornsby et al. vs. U. S. ,10 Wall., 224.

Article 10 refers to contractors for a new settlement.

Article 11 provides that "the political chief shall set a reasonable time for the settler in which he must necessarily cultivate or occupy the land in the terms and with the number of families which he is stipulated, in the intelligence that if he does not do so, the grant of the land shall be void, *but the political chief may, nevertheless, revalidate it in proportion to the part in which the party in interest has complied.*"

In this act of "revalidation" the political chief was authorized to act *alone* without referring the grant to the territorial deputation, or the supreme government for approval; and in this case the petition, report of the Ayuntamiento, and the grant of the political chief *all* show that this was a revalidation or regrant upon the application of the petitioners. Under the regulations, article 1, the political chiefs of the territory have absolute authority to grant the public lands to private persons, Mexicans or foreigners, under the conditions stated in the regulations. He

shared this power with no one; it was absolute; after he had acted he referred his acts to the departmental assembly, which, only, possessed the power to approve or disapprove, and until such approval, the estate was subject to be defeated by some *act* of the government the exact nature of which is not known, as I am not aware of any record showing the departmental assembly ever refused to approve, and if it did, then it was the duty of the governor to report the case to the supreme government, beyond which, nothing is stated in the law or regulations, and in White's Recopilacion, he says he has been unable to discover a record or notice of the proceedings upon some grant or possession which have been made by a captain general, intendant or governor and disapproved of by the king; and he had been unable to ascertain whether such was the case; see,

U. S. vs. Clark, 8 Peters, 459.
Hornsby vs. U. S., 10 Wall., 224.
U. S. vs. Reading, 18 How., p. 1.
U. S. vs. Cervantes, 18 How., 553.

At the most, the effect of the failure of the political chief to report his acts to the departmental assembly would be to suspend the "definitive" validity of the grant, that is it prolonged the liability of the estate to be defeated by the *action* of the assembly and of the supreme government, and no other consequences followed." His neglect was not permitted to operate to divest the grantees of the estate already vested in them, and in passing upon claims on a Mexican grant this court cannot inquire into any acts or omissions of the Mexican authority since they were displaced—*it is not authorized to pronounce a forfeiture for anything done or anything omitted by them since that period.*" The language used in Hornsby vs. United States, 10 Wallace, p. 239.

In the same case, at page 240, the court says: "The interest of a grantee could not be divested under the Mexican law any more than at the common law upon mere allega-

tions or surmises. Some formal and regular proceedings were required to effect such divestiture; and under the Mexican law these had their inception in what is termed a "denouncement" by a party desirous of obtaining the land; an investigation then followed whether or not the condition had been complied with, or so disregarded as to justify a decree of forfeiture. Without such inquisition and decree, the title did not revert to the government, nor was the land subject to be re-granted."

And whether this Petaca grant of 1836 be considered an original grant, or a revalidation of a previous grant upon a denouncement by the petitioners and the finding by the Ayuntamiento and political chief, is immaterial for the purposes of this case, as in either event the title had passed to the grantees by the juridical possession given under the directions of the political chief more than 12 years prior to the change of sovereignty from Mexico to the United States.

The case of Hornsby referred to above in *10Wallace,* is much later than the Peralta case, and the other cases cited by the learned Justice Murray in his dissenting opinion in the court below.

Each of which cases was determined upon the particular facts. As in the Peralta case, the court says: "If the grant had been made and recorded in the proper office, *possession* would have been given to the grantee of the lands which were conveyed." Which was not done in that case, and was done in this, and all of these grants referred to by Justice Murray were made in 1846, immediately before the American occupation, and under circumstances of more or less suspicion, as in the Castro case, 24 Howard, 348, the court says: "And nothing was then produced to support the grant but this paper; no petition from Castro, no *informe* or decree, nor act of juridical possession." So in the case of U. S. vs. Knight, administrator, 1 Black, 227: Grant claimed to have been made by Pico in 1846. There was no order of reference or *juridical possession*, and the court says, "Taken together, these various considera-

tions throw great distrust upon this document, and justify the conclusion that it is entitled to little or no weight." The court then goes on to consider the parol proof which was equally unsatisfactory. So in the case of the U. S. vs. Cambuston, 20 Howard 59. The court says, at page 62:

"The case stands, so far as the claim of title is concerned, upon the naked document itself, purporting to be a donation of the 11 square leagues of land, together with evidence tending to establish its genuineness and slight proof in respect to the possession of the tract."

And again, at page 64: "In the examination of the evidence in this case, we have found it very difficult to resist a suspicion as to the *bona fides* of the grant in question. * * * It was made but a month and a half before the country was taken possession of by the arms of the United States, and made by a person who had but recently expelled from the territory by force its lawful Governor (Michaeltoreno) and had taken possession of it himself: whether or not Pico had been recognized by the existing government in Mexico, at the time the grant is dated (May 23, 1846) does not appear."

And in the case of Barreyesa vs, U. S., referred to by Mr. Justice Murray in his dissenting opinion, reported in 23 Lawyers' Co-operative Edition, p. 913, which is not reported in the regular U. S. reports, none of the facts are given, and the court says: "We are unable to distinguish it from the large number of cases to be found in our reports." Referring, then, to the above cases, from which it is evident there were certain facts in *that* case as in the others, which induced the decision of the court beside the mere absence of the record of the grant.

Article 8 of the regulations referred to above, provides that the political chief shall issue a document to serve as a title to the party in interest, and article 9, that the corresponding entries of all the applications and grants made, shall be made in a book intended for the purpose. It does not state *who* shall make these entries; it certainly was

not the duty of the grantee, but of some officer of the government, perhaps the political chief, although none of the regulations so state, and his connection would seem to cease when he issues the document to serve as a title. The presumption of law is that all officers do their duty.

U. S. vs. Peralta, 19 Howard, 347.
U. S. vs. Aredondo, 6 Peters, 729-731.
U. S. vs. Delassus, 9 Peters, 134.
Hornsby vs. U. S., 10 Wall., 234.
U. S. vs. Reading, 18 Howard, p. 1.

In the present case the court, in its majority opinion at page 136, says: "The genuineness of the grant and the power of the governor to make it has not been contested on this trial."

And on page 137, "The action of the alcalde in placing the 36 in possession and the acquiescence in, and acceptance of such action on the part of the principal petitioners, is strong confirmatory proof that the principal petitioners, Martinez and his father, and Atencio, were acting on behalf of the entire body of settlers."

There is no suggestion in the pleadings or the proof that there was any irregularity, fraud or imposition on the part of the plaintiffs or any of their predecessors, and while there were disputes as to the northern and eastern boundary, they were decided against the petitioners in the trial court, and the United States in this case stands *solely* for its contention upon the ground taken by Mr. Justice Murray in his dissenting opinion, that because some officer of the Mexican government was not shown affirmatively to have performed his duty, in placing the papers upon the record, that this grant by the political chief and governor who had full power to make it, was absolutely void and can not be recognized by this government. We do not contend that the decree should go to those settlers who were placed in possession of the tract under the remarkable proceeding of the justice of the peace in 1848 by which he placed the

first named in possession "in the name of the Territory of New Mexico and of the constitution of the United States." —Transcript, p. 132. But, we do contend that this grant should be confirmed to the 36 persons, who were placed in juridical possession by order of the political chief in 1836, if not solely to the three petitioners.

By the treaty of Guadalupe Hidalgo, of February 2d, 1848, under article 8, 9 Stat., 922-929, property rights were guaranteed, and, "in the said territories, property of every kind now belonging to Mexicans not established there, shall be inviolably respected."

By the Gadsden treaty of December 30th, 1853, 10 Stat., 1031-1035, in article 6, it was provided that "no grants of land under that treaty or any grants made previously, be respected or considered as obligatory *which have not been located and duly recorded in the archives of Mexico*, and this is the only place in either the United States or Mexican law providing for such grants to be recorded under a *penalty* of their *not being recognized by either government*, and we claim that under this grant, or revalidation of the original grant, the successors in interest of the original grantees, to wit, the claimants in this case, would have had a lawful *right* to make perfect had the territory not been acquired by the United States, and that this claim was not one "of grace or favor." It was the juridical possession which terminated the sovereignty of Mexico over this tract of land and vested it in the petitioners and those who were with them.

Moore vs. Steinbach, 127 U. S., 70-80.
U. S. vs. Sutter, 21 Howard, 170-176.

In this last case the court says, at page 178: "We know of no law of the United States which authorizes us to pronounce a sentence of forfeiture for any act or omission since the date of the treaty."

Malarin vs. U. S., 1 Wall., 284-289.
U. S. vs. Pico, 5 Wall., 539.

Wherein Mr. Justice Field, speaking for the court, says: "This proceeding (juridical possession) involved an ascertainment and settlement of the boundaries of the lands granted by the appropriate officers of the government, especially designated for that purpose, and has all the force and efficacy of a judicial determination. *It bound the former government and is equally binding upon the officers of our government.*"

This was a grant in *presenti*, and the act of juridical possession made it absolute.

Hornsby vs. U. S., 10 Wall., 224-240.
Ferris vs. Coover, 10 Cal., 617.

This grant is within the requirements laid down in U. S. vs. Santa Fe, 165 U. S., 715; and in U. S. vs. Sandocal, 167 U. S., 293.

In the latter case the claim was made that the grant was a *community* grant and much stress is laid upon the wording contained in the act of juridical possession, while in this cas, it was an individual grant under the colonization laws, the juridical possession was absolute with no conditions, except cultivation for five years, and the conclusive presumption is from the fact that there had been no denouncement of the grant, that it had been fully complied with; and at all events it was a "condition subsequent" which did not affect, the grant taking effect at once upon juridical possession being given.

Ferris vs. Coover, 10 Cal., 589-615.
U. S. vs. Clarke, 8 Peters, 451 et seq.
Freemont vs. U. S., 17 Howard, 558-561.
Hornsby vs. U. S., 10 Wall., 224-240.
U. S. vs. Chaves, 159 U. S., 452-463-4.

The authority of the governor to make this grant, and the validity of his signature, and the juridical possession are all conceded; and this grant in the hands of the grantees was as efficacious for transferring the title under the Mexican law, as is a patent from the United States gov-

ernment under our system. With us a patent for land is required to be recorded in certain books kept for that purpose in the City of Washington, and numerous prerequisites are necessary to the issuing of a patent. Yet, the possession of the patent by the patentee is conclusive that all the proceedings, rules and regulations necessary to the issuance of a patent have been complied with, and it can only be attacked in a direct proceeding to set it aside for fraud.

Johnson vs. Drew, 171 U. S., 93-99.

This we claim was the case under the Mexican law, and as no proceedings for denouncement had taken place, from the date of the juridical possession, 1836, down to the American occupation in 1848, the conclusive presumption is that this tract of land had passed from the possession of the Mexican government, and was "property" in the hands of private persons, such as was protected by the treaty of Guadalupe Hidalgo; see,

Hornsby vs. U. S., 10 Wall., 240.

And while we believe the court erred in decreeing the property to those who were placed in possession in 1848, under the extraordinary action of the justice of the peace above referred to, and indeed in decreeing it to *any* one except the three petitioners in the grant proceedings, yet we contend that the decree must be affirmed in so far as the appellant is concerned, in that it confirms the grant, and divested the United States of any interest therein.

All of which is respectfully submitted by

EDWARD L. BARTLETT,
Solicitor for Appellees.

No. 72.

Add'l Brf. of Counsel for Appellee

Filed Oct. 26, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 72.

THE UNITED STATES, Appellant,

vs.

ANTONIO SERAFIN PENA, L. Z. FARWELL AND M. Z. FARWELL, AND JOSE A. GARCIA ET AL.

Additional Brief and Argument of Appellee.

T. B. Catron,
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Judd & Detweiler, Printers, Washington, D. C. 10-25-'99

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Additional Brief and Argument of Appellee.

I.

This appeal should have been taken within six months from the date of the decision.

It was a decision confirming the claim "in part" only, and not the claim as presented.

The first paragraph of section 9 of the act creating the Court of Private Land Claims provides absolutely and unconditionally that the United States in case of the confirmation of a claim "in whole or in part" shall have the right of appeal to this court, such appeal to be taken within six months from the date of the decision.

We contend there is no qualification of this provision when the confirmation is "in part," and that the third paragraph does not modify it or create a saving of the right of appeal in a case where the confirmation is "in part" only.

Appeals to this court have been strictly construed and required to come within the letter of the law. Therefore when a claim is confirmed *in part only* the appeal must be taken within six months from the *date* of the *decision*.

The third paragraph is different in language from the first. It omits the provision about confirmation *in part* and provides:

> "*Upon the rendition of any judgment of the court confirming any claim*, it shall be the duty of the attorney of the United States to notify the Attorney General, in writing, of such judgment, giving him a clear statement of the case and the points decided by the court, *which statement shall be verified by the certificate of the presiding judge of said court;* and in any case in which such statement shall not be received by the Attorney General within sixty days next after the rendition of such judgment, the right of appeal on the part of the United States shall continue to exist until six months next after the receipt of such statement."

Evidently Congress made a distinction as to the right of appeal between claims which were confirmed as a whole and those confirmed "in part" only; otherwise why did it insert "in whole or in part" in the first paragraph and omit it in the last? It must have intended that only when the claim presented was confirmed as presented and not "in part" the United States attorney should notify the Attorney General, and the right of appeal be allowed within six months after receipt of the notice.

This court has repeatedly held in substance that the rights, duties, and obligations under the act creating the Court of Private Land Claims were statutory, and that the

letter of the law must govern, and no presumptions could be indulged.

Appellee insists that a comparison of the first and third paragraphs of section 9 of said act shows that there must have been a difference intended by Congress, when it gave the right of appeal, between a confirmation of a claim "in part" and the saving provision of the third paragraph, which gave an additional time for appeal when "the claim" is confirmed. Otherwise, why not have used the same language in the two paragraphs?

The court must hold that by the use of different expressions Congress must have intended to provide for an additional right in the case of a confirmation "in whole" and not in part only.

It is a rule of construction of statutes that expressions used in the statute different in terms from other expressions in the same statute and referring to the same character of subject will not be held to mean the same thing, but should be construed to provide something different the one from the other.

If the third paragraph was intended to embrace all claims confirmed "in whole or in part," then why did not Congress use the same language in the first paragraph and omit therefrom the words "in whole or in part"? Why did it emphasize them by repeating them twice?

II.

It is submitted the United States attorney had no right to *deliberately* and *designedly* omit to notify the Attorney General of the decision for fifteen months, during which time innocent purchasers may have acquired property, and then, when all seemed to be settled, make a report and be allowed to appeal; nor can his act be excused by the approval by the Attorney General thereof. It only shows that the spirit of the law, which was to settle and close up

speedily the adjudication of these land titles, was being evaded on a mere speculation.

The third paragraph of the ninth section certainly contemplated a notice within sixty days. If it was not received in that time, there should be some other excuse—such as sickness, death, or miscarriage—and not a deliberate and intentional failure, as confessed in appellant's brief.

The spirit as well as the letter of the law should be insisted upon.

The claim of appellant's attorney that he was waiting for decisions in the cases of U. S. *vs.* Santa Fé, 165 U. S., 715; U. S. *vs.* Sandoval, 167 U. S., 278, and Rio Arriba L. & C. Co. *vs.* U. S., 167 U. S., 298, involving the status of the lands which were alleged to have been granted for the formation of towns, cities, and communities under Spanish and Mexican law, and that if the Government's contentions therein were sustained, then the grant involved in this case would not be entitled to confirmation at all, is absolutely without foundation, as none of these cases were under any Mexican law, but were all under Spanish law, an entirely different law and different provisions from that involved in this case, which is under the Mexican law of August 18, 1824, and the regulation of November 21, 1828, this grant having been made before the constitution of 1836, and is situate in that part of New Mexico annexed under the treaty of Guadalupe Hidalgo, 1848. The laws of Spain regulating the granting of lands were not in force in New Mexico when this grant was made, but the colonization law of 1824 and the regulations thereunder were in force and provided directly for settlement and cultivation, and gave the lands directly to the individuals, grantees, or empresarios, and made no reservations of any right in the Government except the right of forfeiture to be determined by a denouncement proceeding.

III.

The grant in the case was made to those who petitioned for it by their names, to wit, Jose Julian Martinez, Antonio Martinez, and Francisco Atencio.

The grant preceding, while complying with the law of August 18, 1824, and regulation of November 21, 1828, is in the nature of a denouncement proceeding also, whereby a former grant is sought to be declared forfeited and regranted to them. They showed a former grant to other parties; that the same had been abandoned for twelve years, and an adjudication was had that it had been forfeited and should be regranted to them. The ayuntamiento of Ojo Caliente also recommended that the children of Francisco Antonio Atencio should not be admitted as grantees because they were minors, thus recommending the grant to the three persons named in the petition.

It was the custom and practice in the case of a denouncement of land or a mine to adjudge or regrant it to the same parties who had initiated the denouncement proceedings.

The governor, acting upon the report of the ayuntamiento, granted the land and directed the alcalde of Ojo Caliente to "place *those who now apply for the same*" in possession thereof in the required form and in conformity with the law on the subject, setting forth the *general donation*, in which shall be "necessarily stated the boundaries of said possession," &c. Here is a positive direction to place in possession those "who now apply for the same," thus making the grant to those individuals who are by name mentioned in the application.

The alcalde delivered the possession of the land under the decree and designated the boundaries as directed by the governor, but he also placed in possession several additional persons, all of whom seem to have taken the possession by mutual agreement and understanding with the three peti-

tioners, evidently as settlers under an empresario grant. The three grantees were also placed in possession, and all occupied it, cultivated and lived upon it, from that time, at least, until the commencement of war with Mexico and ever since to the present time.

The evidence shows, without contradiction, that the grant is genuine and the signature to the act of juridical possession is genuine. There is a claim that there has been an attempt to change the eastern boundary in the juridical possession, but the words which were first written are easily determined and are given in the decision of the land court which adopted them as the eastern boundary. Jesus Ma. Barela's evidence (p. 124) shows he was secretary of the alcalde, and signed with the alcalde the act of juridical possession which he personally wrote, and was present when the possession was given. He was afterwards justice of the peace, succeeding the alcaldes, which office disappeared with the Mexican government and was succeeded, under the American system of government, by a justice of the peace. He was the party with whom the possession of the grant papers was found.

The governor's granting decree, pages 130–131, directs the alcalde to take charge of the general document of distribution which should be for the archives, and that he should give testimonies therefrom as the same might be requested. Barela succeeded as justice of the peace in that precinct under the American Government and had the possession of the grant papers and delivered them to the parties when they commenced the proceedings before the surveyor general; so there cannot even be a contention that they came from private hands.

If they did, still their genuineness is clearly established and not denied. Even as to the change which it is claimed exists in the act of juridical possession, as Barela, the secretary, says he wrote that act of juridical possession himself. Either the change was made before the document was placed

in the archives of the alcalde, who signed it, or it must have been made after it was first used in the surveyor general's office, as Barela says in his evidence that he wrote it and mentions no alterations. As an explanation, might Barela not have written the document at the time, and might not the alcalde have made or directed the change before signing it? There is no pretext of concealment of the alteration. The original words are left so they can be easily read, and the others are written over them. This certainly is not the act of a forger or of one who desired to conceal or deceive. It looks as if made honestly, and Barela's evidence so implies. Still, the original is plain and is made out by the court, who found the original to be the correct boundary.

This grant paper comes from official hands—that is, the justice of the peace who succeeded the alcalde who was made its custodian by the governor. Appellant's Exhibit C, page 131, also shows that the alcalde was the custodian of the grant in 1848, and says it ought to be in the archives under his charge. This recognizes the grant and its custody twelve years after its execution. Even if the grant papers did not come from official hands or its possession is not accounted for, still it is admitted to be genuine, and the grantees and their legal representatives have ever since held possession.

The possession was proven beyond all question. It was delivered by the alcalde, to start with, and the parties all entered under him, and the presumption is they continued in possession, and it devolved on the Government to show the contrary, which has not been done. Yet the evidence is conclusive. SERAFIN PENA, page 13, says: "Said town of Petaca was as such in existence at the time of the occupation of New Mexico in 1846 * * * I have examined the list of the Petaca settlers and grantees now handed me by the surveyor general and well remember all of them personally, with very few exceptions, as residents and settlers at said Petaca about forty years ago. Most of them are now dead, but their descendants and successors still live there,

and those of them not dead still live there and with their children cultivate the land." This was given in 1875. In 1875 JOSE YSIDRO BARELA testified before the surveyor general: "I have known the place all my life, having been born in the vicinity of and lived upon the tract. The town of Petaca, except when the hostilities of the wild Indians occasionally compelled a retreat to localities of security, has always been settled and occupied by its inhabitants, and when thus temporarily abandoned the people always returned to live there." The surveyor general, February 20, 1875, found in his decision that "It seems that the original grantees and their legal representatives have held and occupied the premises ever since they first took possession, except when driven off by hostile Indians, and are now in undisturbed possession. I have no doubt the papers of original title are genuine, and that the present claimants are acting in good faith."

FRANK A. CHAVES, page 39, testified:

Question. Were you born on the Petaca grant?
Answer. Yes, sir.
Question. How long had your father lived there before you were born?
Answer. I did not understand you. He had lived there since '36.
Question. Is your father alive?
Answer. No, sir; he died. It was in 1864.

The evidence shows his father was placed in possession and lived on the property until he moved to Conejos in 1855—*i. e*, nineteen years—and then his grandfather occupied it until he died.

SERAFIN PENA testified:

Question. Do you know how long those people occupied their land?
Answer. I do; yes, sir.
Question. For what time?

Answer. They occupied it all the time, &c. (p. 46).

Question. When did you first go to this land to occupy it and raise crops?

Answer. It must have been in the year 1838 or '36; I am not certain about the year.

JOSE MA. OLGUIN testified:

Answer. There was a man who had the grant for 11 years and abandoned it, and then we made a petition for this Petaca grant.

Question. In the year '36?

Answer. In '36.

Question. Do you know about—did they have their families with them?

Answer. Yes, sir; they were there with their families. At times they would take them there to dig their ditches and to make their farms, and then they would take them up where the Indians would come in and drive them out.

Question. What did they do there on this ground, those who made the petition on behalf of the others of you?

Answer. They cut the timber off, made ditches, and made their shanties.

Question. Did they cultivate the ground?

Answer. Yes, sir.

JOSE ANTONIO LUCERO testified, page 55:

Question. Well, after the grant was made, what did the people do there?

Answer. They worked there some.

Question. What kind of work?

Answer. They dug ditches and they began to make farms.

Question. Well, did they build houses there?

Answer. Yes, sir.

Question. From that time on did the people dwell continuously there or not?

Answer. They continued there some, but sometimes they would not be there on account of the Indians.

Question. Why did they have to leave on account of Indians?

Answer. On account of the small number of the men and on account of the hostilities of the Indians.

This evidence is without contradiction; it shows a continuous settlement, cultivation, and use of the land under the grant; that the parties in good faith complied. It was a frontier settlement and was occupied with much risk. The evidence shows many parties were killed by the Indians; still they persisted in occupying it to the present. When the United States troops occupied Mexico, it is a matter of history that the Indians, knowing of the war between the two nations, became hostile and drove in or killed most of the frontier settlers. Colonel Donophan made an expedition into the Navajo country before proceeding to Chihuahua with his regiment; this was in 1847, and without doubt in 1847 those settlers were compelled to go in under protection of the larger settlements and the army in that year. With the change of government they evidently supposed they must have some recognition, so the acts of the prefect in 1848, given in evidence, which clearly show the existence of this grant with the alcalde. The genuineness of the grant and continuous possession of the grantees for the purpose of settlement and cultivation are all that is required to establish it, even if it did not come from the archives. Certainly it was found with the successor of the alcalde, by whom it was ordered by the governor to be kept.

The evidence in this case shows the delivery of the possession by the alcalde, the entering into possession by the grantees residing upon the property, they and their assigns up to the present time, a period of sixty years, during which time there was no pretense that claimants were not the owners, or that any other person claimed the title to the property; those in possession have remained undisturbed, continuous, open, and notorious. It is insisted that a possession such as this, which is notice to the world, and when neither the government of Mexico nor of the United States

have undertaken to dispose of it to other parties, but have stood by and recognized the rights of such possession, obviates the necessity of proof of archive evidence in case there is any failure in this case.

In Pico *vs.* The United States (2 Wall., 282 and 283), the court says: "When, therefore, a claim to land in California is asserted under an alleged grant from the Mexican government, reference must in the first instance be had to the archives of the country embracing the period when the grant purports to have been made. If they furnish no information on the subject, a strong presumption naturally arises against the validity of the instrument produced, which can only be overcome, if at all, by the clearest proof of its genuineness, accompanied by open and continued possession of the premises. In this case the genuineness of the grant is admitted, in addition to its being clearly proven, both as to the genuineness of the signatures executing it, as well as to the possession which was given, one of the witnesses testifying that he was actually present when it was done."

See also United States *vs.* Alviso, 23 How., 319; United States *vs.* Polack, Hoffman's Land Cases, 297; United States *vs.* De Horo, 22 How., 243.

It is admitted in this case that the signatures of all the parties to the grant are genuine. There is no question about that. There is no question about the possession having been given and about the parties having entered upon and complied with the terms of the grant under the rule. In United States *vs.* Chaves (159 U. S., 455), an occupation of a property for that length of time presupposes a grant. In this case we have actually proven one; and certainly when we claim a grant which is actually proven and the possession thereunder adverse, notorious, and continuous for over half a century without any interruption, the necessary archive evidence will be presumed; certainly when it

has been shown the archives of New Mexico have been lost and destroyed, to a certain extent, in regard to documents containing grants and land titles, as was adjudicated by this court in United States *vs.* Chaves (159 U. S., 463).

As we have said before in another brief, the Government not only waited until nearly all living witnesses were dead before authorizing the institution of these proceedings, but it so negligently cared for and kept the archives containing grants and documents affecting lands in the territory that large numbers of them became lost and destroyed; and now we insist it is inequitable in the Government, after having allowed a portion of the books and papers, as is shown by United States *vs.* Chaves, in 159 U. S., 463, to become lost or destroyed, to insist upon rigid proof. The proof of possession in good faith, the cultivation of the land, and the residing upon it and claiming it by the grantees, their heirs and assigns, is sufficient to establish the grant and sufficient to establish every essential which is necessary to make the grant valid, especially when we have produced from the public custodian of the archives the grant paper, which has been introduced in evidence. Possession, especially for so long a time, will take the place of archive evidence.

IV.

The boundaries as fixed by the court are not in accordance with the evidence or the weight of evidence, especially on the north, and most probably on the east.

We do not claim in any event more than *eleven leagues*, as the act of Congress creating the land court limits us to that.

The evidence as to the northern boundary, which in the act of juridical possession was fixed at the hill commonly called Tio Ortiz, shows that name is the one it commonly bore in February, 1836.

There is some slight evidence showing two hills called by that name—one further north than the other. We claim the great weight of the evidence, if not nearly all of it, shows the most northern hill to be the grant boundary.

FRANK A. CHAVES, page 35, testified that the Tio Ortiz hill is three miles east of the head of the Petaca river and at the head of the Arroyo de los Aguajes, north of the Aguajes and four miles southwest of the San Antonio mountain. He knew of no other hill by the name of Tio Ortiz.

SERAFIN PENA, page 43, testified that the Tio Ortiz hill is the north boundary of the grant; that the San Antonio mountain is east of it two or three miles; that he knows of no other hill by that name; that he knows the boundaries from those grantees who took possession in 1836, who occupied it all the time, except sometimes when interfered with by the Indians. He went there to raise crops in 1838 or 1836; never heard of a hill in neighborhood of Las Tusas called the Loma de Tio Ortiz (page 49), although he lived there.

JESUS MA. OLGUIN, page 51, testified that the north boundary was the Tio Ortiz hill. He was 26 years old in 1844, so was 18 when the grant was made; that the Tio Ortiz hill is west of the San Antonio mountain three or four miles; that he has known it from the time he was 12 or 14 years old (that is, before the grant was made), and it was always so called; that he herded sheep there, and never heard of any other hill called the Tio Ortiz hill; never heard of any hill by that name near Los Tusas.

JOSE ANTONIO LUCERO, page 56, testified that the north boundary is a hill by the name of Loma de Tio Ortiz, which is a hill at the head of the Arroyo de los Aguajes, about four miles west of the San Antonio mountain, which is a

little distance northwest of the hill; he was 76 years old, and says he has known the hill since he was very young; that he was born at Ojo Caliente, near this grant, and now lives in Correjos, Colorado, it being almost at the line of Colorado, which passes over the San Antonio mountain. He says he never heard of any other hill near Las Tusas called Tio Ortiz hill.

AGAPITO TRUJILLO, page 59, testified that he lived at Petaca over 50 years; that he knows the grant; its northern boundary is Tio Ortiz hill, about four miles southwest of the San Antonio mountain; that he never heard of any other hill called the Tio Ortiz.

ARICETO MARTINEZ, page 60, testified that he had lived on the grant and knew it. His mother and father had lands there; that he knows the Tio Ortiz hill; it is at the head of the Arroyo de los Aguajes, about four or five miles from the San Antonio mountain, which is to the northeast of it. He has heard it called Tio Ortiz since he was ten or twelve years old, and never heard of any other hill called Tio Ortiz.

ANTONIO ABEYTIA TORRIO, page 71, on cross-examination says the Tio Ortiz hill is on the side of the San Antonio mountain where there is a lake at the base. (This on cross-examination; he was a witness for appellant.)

The evidence introduced by appellant as to the Ortiz hill being at or near Las Tusas is almost nothing, and the witnesses are also very contradictory and speak of hearsay of parties who are still living. Boundaries may be proven by general repute and hearsay of old witnesses who are dead; if alive they are the best evidence, their declarations not.

ANTONIO M. ORTEGA, a witness for appellant, testified he knew the Tio Ortiz hill, and that it is about ten or twelve

miles north of Petaca (which would place it just a little southwest of the San Antonio mountain).

JUAN ANTO. PENA, witness for appellant, testified, page 94, he heard of a hill called Tio Ortiz, near the San Antonio mountain, but had never heard of any other hill by that name.

DESIDERIO ORTIZ, page 106, testified he knew the Tio Ortiz hill; it was to the north, near the San Antonio mountain, five or six miles southwest.

There can be no such question here as in the Sandoval and Santa Fé or the Cañon de Chama cases. Those were all under the Spanish law, long before the Mexican colonization law of 1824 and regulation of 1828. Our grant is under Mexican law; it was made in 1836, before the adoption of the constitution of 1836 or the law of April 4, 1837; so neither the Spanish law, nor the constitution of 1836, nor the law of April 4, 1837, affects it. It was a colonization grant, either directly to the three grantees or to them as empresarios, and was either made direct or by a denouncement proceeding. In either case the parties complied with the grant, entered into possession, lived on it, and cultivated it up to the present time from the date of the grant.

This court has repeatedly decided that the *only laws* in force in the territories of Mexico for the disposition of the public lands, with the exception of those referring to missions and towns, are the law of August 18, 1824, and the regulations thereunder of November 21, 1828.

Van Reynegan *vs.* Bolton, 95 U. S., 33.
United States *vs.* Vigil, 13 Wall., 457.
Fremont *vs.* U. S., 17 How., 542.
Hornsby *vs.* U. S., 10 Wall., 224.
And over a dozen other cases.

Article 1 of those regulations under said law provided that the political chief should grant lands to contractors (empresarios), families, or private persons for settlement and cultivation; nothing else. No right in the land was reserved to the Government (as under the Spanish law in the case of grants to municipalities) of the disposal of common lands. The unallotted lands under the Mexican law and regulations were commons for the grantees, to be held, appropriated, used, and disposed of by them. Settlements such as this were contemplated by those regulations. Surely, when we consider that the governor directed the land to be given to the petitioner and "his associates," we may consider he had in contemplation something like an empresario grant.

Maxwell Land Grant Case, 121 U. S., 262.

There could be no forfeiture except by means of a denouncement proceeding which was judicial in its nature.

Fremont *vs.* U. S., 17 How., 542.

The grantees were required to occupy the land five years. They occupied it all the time to the present, five years at least. There is no evidence the grant was unoccupied at any time except when Indians drove off the settlers, and then they returned immediately.

The proceedings of 1848 do not claim or intimate there was an abandonment or ever had been. The absence of the petition or application for that proceeding, which might show the reason for it, is certainly suspicious. Why did not appellants put it in evidence? Was it because it would disprove their contention?

There is no proof that the eastern boundary was altered after the grant was made (as stated by Judge Sluss in his opinion). On the contrary, the only proof is that of the witness Barela, who was the secretary of the alcalde, and he says he wrote the act of juridical possession and it is the

one he wrote. If it was changed after signature, it was so done in the surveyor general's office; but we insist that, its genuineness being established and the possession uncontradictedly shown, and it coming from the hands of the secretary of the alcalde and his successor as a justice of the peace, it comes from proper hands, and that the boundaries therein fixed are the true boundaries. As the grantees and their legal representatives have not been connected with any change, they should not in any event be charged with fraud. If a fraud was attempted it can be set aside and the correct boundary taken without doing harm to innocent parties.

Appellants' counsel contends that the attempt was made to alter the eastern boundary in the juridical possession so as to include the Tio Ortiz hill on the north. An examination of the map of survey included in the transcript will refute that contention. It will be seen by that map that the mesa of Petaca is east of the Petaca creek and is marked thereon "pine and spruce." If that mesa is followed over the top or along its western edge to its most northern point, and then a line is drawn from the most northern point thereof until it reaches as far north as the Tio Ortiz hill, as shown on that map, it will be seen that the hill will fall to the west of that line and be on the northern boundary. When natural objects are called for, a survey must follow them as far as they reach, and thereafter the line must run according to the cardinal points, just as we have suggested.

They have always held the property up to the boundaries proved. As we are limited to eleven leagues by the act of Congress, there can be no special object in claiming to the east beyond what the court gives. We, however, do not admit that the grant should be limited on the east, as the land court has attempted to do. The grant possesses all the essential requisites to *bind* the Government to confirm it.

Besides, the long possession, which is undoubted and un-

questioned under the case of United States *vs.* Chaves, 159 U. S., 463, establishes a presumption of a grant which is equivalent to a perfect title.

There can be no contention that the parties who were placed in possession in 1848 by order of the prefect, except such of them as were original grantees or heirs or assigns thereof, can be the owners of the grant. It will be noticed that the petition, which should have preceded that decree of the prefect, is not among the papers or introduced in evidence; undoubtedly it would have thrown light on those proceedings; and yet that decree only directs that those persons be repossessed who are "*noted down in the grant of said possession*, which ought to be in the archives under your charge;" so that only the old grantees and their legal representatives could have been included; but it recognizes the existence of the grant and directs to repossess the parties under the Constitution of the United States.

What may have been the reason for this is kept back by the appellant, who does not introduce in evidence the application to have these proceedings taken by the prefect.

We ask for a confirmation with the boundary on the north to the Tio Ortiz hill, situate about four miles west or southwest of the San Antonio mountain, and on the east to the boundary expressed in the act of the juridical possession.

T. B. CATRON,
Of Counsel for Appellees.

UNITED STATES *v.* PENA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 72. Submitted October 27, 1899. — Decided December 18, 1899.

The appeal in this case having been allowed within six months after the receipt by the Attorney General of the statement of the case by the trial attorney, and the action of the trial attorney having been approved by one of the justices of the trial court, there is no sufficient reason for the motion to dismiss, this court having the power under its rules, to notice plain errors, even when not assigned.

An appeal from the Court of Private Land Claims can be allowed by one of the Associate Justices of the court.

The grant of lands, in this case, set forth at length in the opinion of the court, was a grant in severalty, and not one of a single large tract to

several persons, to be by them held in common, or distributed among each other.

This grant, having been made after the signing of the treaty of Guadaloupe Hidalgo, it was not within the power of the alcalde to change it by directing grants to additional persons, not included in the original grant; and the whole proceeding may be ignored, except so far as it indicates those who took title under the original grant, or discloses those who were their successors in interest.

THE statement of the case is in the opinion of the court.

Mr. Attorney General, *Mr. Solicitor General* and *Mr. Matthew G. Reynolds* for appellants.

Mr. Edward L. Bartlett and *Mr. T. B. Catron* for appellees.

MR. JUSTICE BREWER delivered the opinion of the court.

This case comes from the Court of Private Land Claims, and the first contention of appellees, made on a motion to dismiss the appeal, is that it was not taken in time. The decree was entered December 1, 1896, and the appeal was not allowed until April 14, 1898. Section 9 of the act creating the Court of Private Land Claims, act of March 3, 1891, c. 539, 26 Stat. 854, 858, while giving to either party the right of appeal within six months from the date of the decision, also provides that on the rendition of a judgment confirming any claim it shall be the duty of the attorney of the United States to notify the Attorney General in writing of the judgment, giving a clear statement of the case and the points decided — a statement to be verified by the certificate of the presiding judge of the court; and also that if the Attorney General shall not receive such statement within sixty days next after the rendition of a judgment the right of appeal on the part of the United States shall continue to exist until six months next after the receipt of the statement. It appears in the record, from the certificate of the judge allowing the appeal, that no such statement was sent to the Attorney General until March 9, 1898, or received by him until March 25, 1898. So, within the letter of the statute, the time for an appeal on the part of the United States had not expired.

It is also insisted that it is the duty of the United States attorney to give this notice, and that, therefore, his dereliction cannot enlarge the time within which the Government must act if it wishes to appeal. Can he, it is asked, continue indefinitely the right of appeal? In the brief filed by the Government is a statement of the reasons for the delay in giving the notice, but it is unnecessary for us to enter into any examination of the matter. It is enough that it was called to the attention of one of the justices of the trial court, who has, by allowing the appeal, approved the action of the attorney. It is for the party challenging such action to show that it was wrong.

A third proposition is that no assignment of errors is annexed to the transcript, as required by sections 997 and 1012 of the Revised Statutes. But this is not sufficient to compel a dismissal of the appeal. Paragraph 4 of Rule 21 of this court provides that the court may at its option notice a plain error not assigned. *Ackley School District* v. *Hall*, 106 U. S. 428.

A final contention is that the allowance of appeal was not made by the presiding judge but by one of the associate justices of that court. But the provision of section 9 is that appeals shall be taken in the same manner and upon the same conditions as appeals from the judgments of a Circuit Court of the United States, and by section 999 of the Revised Statutes any Judge of such court has the power to act. The rule is different in cases coming from a state court. *Havnor* v. *New York*, 170 U. S. 408.

There is no sufficient reason for sustaining the motion to dismiss, and it is denied.

Coming now to the merits of the case it is unnecessary, in view of the contentions of the Government to which alone we direct our attention, to consider other than two matters, to the understanding of which a brief statement of facts is necessary. In 1836 Jose Julian Martinez and others made application to the ayuntamiento of Ojo Caliente for a tract of public land, called "the Petaca." That body declared its opinion that the grant should be made, and thereupon the governor signed this order:

"SANTA FÉ, *February* 25, 1836.

"Having seen the action of the ayuntamiento of Ojo Caliente of date 22d instant, in which they say there is no objection to granting the applicant and his associates the land mentioned, the former grantees not possessing now any right herein, they having abandoned the same, the alcalde of said place will place those who now apply for the same in possession thereof in the required form and in conformity with the law on the subject, setting forth the general donation, in which shall necessarily be stated the boundaries of said possession, and without prejudice to any third party; also binding the grantees to the obligations prescribed by the laws to acquire title, for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom, as may be requested of him, on payment of his corresponding fees.

"PEREZ."

In pursuance of this order the alcalde proceeded to give juridical possession, and this is the report of his action:

"For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

"At Santa Cruz del Ojo Caliente, jurisdiction of this name, on the twenty-fifth day of the month of March, one thousand eight hundred and thirty-six, in compliance with the decree of the civil and military governor of the Territory of New Mexico, Alvino Perez, of date February 25th of the same year, in which he directs me to place in possession the petitioners who have applied for the Petaca tract of land, and as is set forth in their petition of date 29th of January of the same year, I proceeded to distribute said land in the presence of the parties interested, giving to each one of those mentioned in the list one hundred and fifty varas in a direct line, designating to them as their boundaries on the south the entrance to the canoncito and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz Hill, on the east the creek of the aguaje of the Petaca, and on the

west the boundary of the Vallecito grant, within which limits the said new grantees were located. Of these I donated only to citizen Felipe Jaquez from the boundary of Vicente Martin to that of Eusebio Chaves, the land being a narrow strip and of little utility; thereupon I donated to citizen Manuel Lujan two small valleys, which were not measured with the line and reach to the distribution of the said canoncito, and I donated to citizen Mariano Pena two small valleys, very narrow, without varying; and, continuing, I donated to citizen Antonio Eluterrio Ortiz, in the same canoncito, a small valley, also without varying; following the same course in the said canoncito, I donated to citizen Jose Francisco Lucero a small valley, also without varying, and to Jose Antonio Lucero another small valley, the boundary thereof being on the south the mouth of the same canoncito, leaving therefor a plaza one hundred and fifty varas, and fifty for women's gardens and fifty for ingress and egress, there remaining at the mouth of the canada de la Dorada, for common watering places, one hundred and fifty varas in a direct line, which donation I made in the name of the national sovereignty, in conformity with the law on the subject, the grantees mentioned in the annexed list understanding that the pastures, forests, waters and watering places are in common, and they were further informed that he who fails to occupy and cultivate the land granted within the term of five years, in order to acquire title, the same cannot be by him sold, exchanged, nor alienated, nor will he be admitted in a new settlement; and if any should of their own accord abandon the tract, they remain informed further that they possess no right, such being the requirements of law; and being informed of and agreeing to all this, they received the accepted possession, in virtue of which they plucked up herbs, leaped, cast stones and shouted with joy, saying, God be praised, long live the nation, long live the sovereign congress and the law that governs and protects us, and other manifestations of pleasure, by virtue of which they took possession; and, that it may so appear at all times, I, under this decree, signed this grant and donation with all the authority His Excellency was pleased to confer

upon me for the purpose set forth in the above petition and expressed in said decree attached to the present grant, the witnesses being the citizens Jesus Maria Barela and Jose Maria Barela and Jose Francis Lucero, as properly made.

"Jose Antonio Martinez.

"Jesus Maria Barela.

"There was given to Juan de Jesus Jaquez from the boundary of Jose Gabriel Vigil to a pinabete on the north; valid . . . . (Rubric)"

At the close of this follows the list referred to in the report.

What was the scope and effect of this grant? Obviously we think to give to each individual named in the list the particular tract set apart to him. It was a grant in severalty and not one of a single large tract to several persons to be by them held in common or distributed among each other. It matters not that the petition for this grant was in the name of only two or three individuals, for it was not an uncommon thing for one or more to appear as the representatives of a body or a number of persons. The language of the order of the governor seems to contemplate a grant in severalty, for it speaks of "the general donation, in which shall necessarily be stated the boundaries of said possession." The outer limits within which the grants are to be made are to be stated, and within those limits the several grantees are to have their possessions. Again, the provisions that "the alcalde shall take charge of the general document of distribution" and "give testimonios therefrom as may be requested," carries the same suggestion. The alcalde is to take charge of this general document for filing in the archives, but while holding it he is to give testimonios from it to the several parties who receive grants within the out-boundary limits.

But whatever doubts might arise from an examination of the governor's order, if that was the only document to be considered, the report of the alcalde's proceedings shows affirmatively that he distributed the lands in the presence

of the parties interested, "giving to each one one hundred and fifty varas in a direct line." He evidently understood that he was to distribute this land among certain individuals. He proceeded to do so and gave juridical possession accordingly. Whatever may be thought of his interpretation of the governor's order, the only juridical possession which is shown to have been given is juridical possession in severalty to the parties named in the list. The original petitioners were never put, so far as the record shows, in juridical possession of the entire tract, and such a grant, if it was so intended, was never made effective by any juridical possession. We think it more in consonance with justice and equity to hold, not that the grant was of an entire tract which never became operative because of a failure to give juridical possession, but that the alcalde rightfully understood it as a grant in severalty, and giving juridical possession vested in the grantees the tracts of which they were so placed in possession. *United States* v. *Santa Fé*, 165 U. S. 675; *United States* v. *Sandoval*, 167 U. S. 278; *Rio Arriba Land &c. Co.* v. *United States*, 167 U. S. 298.

While the evidence as to the possession subsequent to the action of the alcalde is not very specific or entirely satisfactory, yet we think it is a fair conclusion that the parties did go into possession and continued that possession until the cession by the treaty of Guadaloupe Hidalgo. It is very likely, as suggested, that during the war between Mexico and the United States the possession was in some respects at least interrupted, but such interruption cannot be adjudged fatal to the validity of the grant. We, therefore, are constrained to hold that this grant should be sustained as a grant in severalty to the individuals named in the list.

The other matter which requires notice arises upon these facts: The treaty of Guadaloupe Hidalgo was signed February 2, 1848, ratifications were exchanged May 30, 1848, and proclamation made July 4, 1848. By this treaty New Mexico was ceded to the United States, but for some time prior to and during that year our forces were in possession of that territory. In the month of March, 1848, these proceedings

were had. The prefect, upon application, made an order to the alcalde, of which this is a copy:

"In fulfilment of the discharge of your duty you will go to the point of La Petaca to place in possession all the individuals who are noted down in the grant of said possession, which ought to be in the archive under your charge, giving the lots which are found vacant to those persons who ask for them and who are unprovided, the equality in all the possessions, and that they pay you your fees.

"Ojo Caliente, March 20, 1848.

"SALVADOR LUCERO (Rubrica)

"*Prefect of Rio Arriba.*

"To the Alcalde Don Vicente Jaramillo."

In pursuance of this order the alcalde proceeded to make the further distribution, as appears from the following report:

"General list, formed at the new possession which they commonly call La Petaca, made to-day, the 27th of March, of the year of our Lord 1848, in conformity to the superior decree of the prefect, Don Salvador Lucero, where he orders me that I place in possession those citizens who justly may have died or are not present; thus it is that, having stopped at the first boundary, which consists of the plaza, upwards, accompanied by the retiring justice, Don Bernardo Valdez, and my clerk, Vicente Abilucea y Cordoba, and all the municipality of citizens, and for the exact fulfilment I stated in a loud voice that I was going to measure the land in the name of the Territory of New Mexico, and that they shall receive that concession in the name of the Constitution of the United States, etc., and that measurement to the parties placed in possession was begun by the retiring justice of the peace, Don Bernardo Valdez, of that which he had donated from the year 1843, and they are the following."

Then follows a list of names, and the report closes in these words:

"And in order that this may in all time appear, which are

required by the law, they took possession of it by the authority and in the name of the Territory of New Mexico and respecting the Constitution of the United States, and I, the attending witness, and the retiring justice signing to-day, the day of the above date *ut supra*.

"NOTE. — The citizens placed in possession in this grant with 150 varas and with the others who may have more shall have to enjoy them in the name of the Territory of New Mexico and the Constitution of the United States, as this is the authentic disposition of the retiring and new officials, and by superior order there was given and donated to them the said possessions in the regular rule of 150 varas and in a straight line on both sides of the stream. In order that this favor may have the force and validity which the laws cite, we sign and authenticate it with all the powers which are conferred, in order that there may be no change and that it may not be again donated by another justice, except on account of abandonment of five years, or on account of not wishing to work in the fulfilment, benefit, proper, but then through the mayordomo report will be made to this court in order that another may enjoy that which he may reject; and this donation was signed and given to-day, the 27th of March, of the year of our Lord 1848.

"JOSE VICENTE JARAMILLO, [SCROLL.]
Justice of the Peace of the County of Rio Arriba.

"Attending:

"VICENTE ABILUCEA. [SCROLL.]

"BERNARDO VALDEZ, *Retiring Justice.*"

In respect to this it is enough to say that in so far as it was an attempt to create new rights it was beyond the power of the officials who assumed to act. The order of the prefect has a twofold aspect. It directs the alcalde to put in possession those who were named in the original grant, and this may have been within the scope of his authority. But it also attempts to make a grant to additional persons, and this was beyond his power. *Crespin* v. *United States*, 168 U. S. 208. Neither could the alcalde make such a grant. *Hays* v. *United*

States, ante, 248. Indeed, it may well be doubted whether since the country was in the possession of the United States forces, and a treaty had already been signed, which was shortly thereafter ratified, for the cession of the entire Territory, any Mexican official could by new grants diminish the amount of land which was to become the property of this Government. And of course it goes without saying that no such officials had authority under the Constitution and laws of the United States to grant public lands. This whole proceeding may rightfully be ignored except so far as it indicates those who took title under the original grant, or discloses those who were their successors in interest. Further than this it has no significance.

The decree of the Court of Private Land Claims will be reversed, and the case remanded with instructions to enter a decree in favor of the original grantees or their successors in interest for the lands granted in severalty. It may be necessary to take further testimony for identifying such parties, and the trial court is at liberty to take such testimony.